

BellSouth Telecommunications, Inc.

Legal Department

1600 Williams Street

Suite 5200

Columbia, SC 29201

Patrick W. Turner

General Counsel-South Carolina

803 401 2900

Fax 803 254 1731

patrick.turner@bellsouth.com

March 8, 2004

The Honorable Bruce Duke
Executive Director
Public Service Commission of SC
Post Office Drawer 11649
Columbia, South Carolina 29211

Re: Joint Petition for Arbitration of NewSouth Communications, Corp., NuVox Communications, Inc., KMC Telecom V., Inc., KMC Telecom III LLC, and Xspedius [Affiliates] of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended
Docket No. 2004-42-C

Dear Mr. Duke:

Enclosed for filing are the original and one paper copy of BellSouth Telecommunications, Inc.'s ("BellSouth's") Response to the Petition for Arbitration on behalf of NewSouth Communications, Corp., NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius in the above-referenced matter. Also enclosed is a CD-Rom that contains redlined copies of the various interconnection agreements that comprise Exhibit B to BellSouth's Response.

As indicated on the enclosed Certificate of Service, I am providing counsel for the Parties and counsel for the Commission's Staff with: copies of this letter, BellSouth's Response, and BellSouth's Issues Matrix (which is Exhibit A to BellSouth's Response) by email; and copies of this letter and a CD-Rom that contains redlined copies of the various interconnection agreements that comprise Exhibit B to BellSouth's Response by U.S. Mail.

Sincerely,



Patrick W. Turner

cc: John J. Pringle, Jr., Esquire
John J. Heitmann, Esquire
F. David Butler, Esquire
Florence Belser, Esquire

Enclosures

PC Docs #529910

**BEFORE THE
SOUTH CAROLINA PUBLIC SERVICE COMMISSION**

In the Matter of)	
)	
Joint Petition for Arbitration of)	
)	
NewSouth Communications Corp.,)	
NuVox Communications, Inc.)	Docket No. 2004-42-C
KMC Telecom V, Inc., KMC Telecom III LLC, and)	
Xspedius Communications, LLC on Behalf of its)	
Operating Subsidiaries Xspedius Management Co.)	
Switched Services, LLC, Xspedius Management Co.)	
Of Charleston, LLC, Xspedius Management)	
Co. of Columbia, LLC, Xspedius Management Co.)	Filed: March 8, 2004
Of Greenville, LLC, and Xspedius Management Co.)	
Of Spartanburg, LLC)	
)	
Of an Interconnection Agreement with)	
BellSouth Telecommunications, Inc.)	
Pursuant to Section 252(b) of the)	
Communications Act of 1934, as Amended)	
)	

**BELLSOUTH TELECOMMUNICATIONS, INC.'S ANSWER TO THE PETITION
FOR ARBITRATION OF NEWSOUTH COMMUNICATIONS CORP., NUVOX
COMMUNICATIONS, INC., KMC TELECOM V, INC., KMC TELECOM III LLC,
AND XSPEDIUS COMMUNICATIONS, LLC**

Pursuant to 47 U.S.C. § 252(b)(3), BellSouth Telecommunications, Inc. ("BellSouth"), responds to the Petition for Arbitration ("Petition") filed by NewSouth Communications Corp., NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III, LLC, and Xspedius Communications, LLC ("CLECs" or "Petitioners") and states the following:

1. Sections 251 and 252 of the Telecommunications Act of 1996 ("1996 Act") encourage negotiations between parties to reach local interconnection agreements. Section 251(c)(1) of the 1996 Act requires incumbent local exchange companies to negotiate the

particular terms and conditions of agreements to fulfill the duties described in Sections 251(b) and 251(c)(2)-(6).

2. As part of the negotiation process, the 1996 Act allows a party to petition a state commission for arbitration of unresolved issues.¹ The petition must identify the issues resulting from the negotiations that are resolved, as well as those that are unresolved.² The petitioning party must submit along with its petition “all relevant documentation concerning: (1) the unresolved issues; (2) the position of each of the parties with respect to those issues; and (3) any other issues discussed and resolved by the parties.”³ A non-petitioning party to a negotiation under this section may respond to the other party’s petition and provide such additional information as it wishes within 25 days after a commission receives the petition.⁴ The 1996 Act limits a commission’s consideration of any petition (and any response thereto) to the unresolved issues set forth in the petition and in the response.⁵

3. Through the arbitration process, a commission must resolve the unresolved issues ensuring that the requirements of Sections 251 and 252 of the 1996 Act are met. The obligations contained in those sections of the 1996 Act are the obligations that form the basis for negotiation, and if negotiations are unsuccessful, then form the basis for arbitration. Issues or topics not specifically related to these areas are outside the scope of an arbitration proceeding. Once a commission has provided guidance on the unresolved issues, the parties must incorporate those resolutions into a final agreement to be submitted to a commission for approval.⁶

¹ 47 U.S.C. § 252(b)(2).

² *See generally*, 47 U.S.C. §§ 252 (b)(2)(A) and 252 (b)(4).

³ 47 U.S.C. § 252(b)(2).

⁴ 47 U.S.C. § 252(b)(3).

⁵ 47 U.S.C. § 252(b)(4).

⁶ 47 U.S.C. § 252(a).

4. BellSouth and CLECs previously entered into Interconnection Agreements (“Agreements”) in South Carolina that have now expired. Although BellSouth and CLECs negotiated in good faith as to the terms and conditions for a new Agreement, the parties have been unable to reach agreement on some issues and, as a result, CLECs filed their Petition. BellSouth responds below to each of the separately numbered paragraphs of the CLECs’ Petition:

5. BellSouth lacks information sufficient to either admit or deny the allegations in Paragraph 1 of the Petition. These allegations, therefore, are denied.

6. The allegations in Paragraph 2 of the Petition require no response from BellSouth.

7. BellSouth admits the allegations in Paragraph 3 of the Petition, except the allegation that “BellSouth has, at relevant times been a dominant provider of telephone exchange service.” CLECs do not define the term “dominant carrier,” and BellSouth does not know what significance is intended by this term in the context of Paragraph 3. Accordingly, this allegation is denied.

8. Paragraph 4 of the Petition sets forth the CLECs’ rendition of BellSouth’s legal obligations under the Act. This paragraph contains no factual allegations to which a response is required.

9. BellSouth is without knowledge of the allegations of Paragraphs 5-8 of the Petition. Accordingly, they are denied.

10. The allegations of Paragraphs 9, 10, and 11 are admitted.

11. BellSouth denies the allegations of Paragraph 12 of the Petition. Specifically, BellSouth states that it is improper for the CLECs to file a Joint Petition, and this filing should be

rejected by the Commission. This issue is addressed at greater length in the Motion to Sever or to Adopt Procedural Requirements that BellSouth filed on February 27, 2004.

12. BellSouth states that the provisions of the 1996 Act referenced in Paragraph 13 speak for themselves and require no response from BellSouth.

13. BellSouth admits that the pertinent statutory deadlines are accurately set forth in Paragraph 14 of the Petition. The remainder of this Paragraph references sections of the 1996 Act, which speaks for itself. Accordingly, no response from BellSouth is required.

14. Paragraphs 15 through 19 of the Petition contain no factual allegations to which a response is required by BellSouth. These paragraphs contain an extensive rendition of the CLECs' view of the pertinent federal law, all of which speaks for itself. Accordingly, no response is required by BellSouth.

15. In response to Paragraphs 20 and 21 of the Petition, BellSouth states that these Paragraphs do not contain factual allegations to which a response is required, but rather are composed of a list of the issues as framed by the CLECs, along with the CLECs' positions on the issues and some of BellSouth's positions on the issues. Prior to the filing of the Petition, CLECs identified certain issues in a timely manner. In each such instance, BellSouth provided to the CLECs its position on the issue, which was included in the issues matrix attached to the Petition. The parties also negotiated an agreed issue statement for most of these issues. The CLECs, however, also raised a substantial number of issues when there was so little time remaining before the statutory filing deadline that BellSouth was not able to provide its positions on these issues for inclusion in the matrix attached to the Petition. Exhibit A to this Answer is a modified Matrix that reflects the current status of the issues identified in the Petition and the positions of both BellSouth and the CLECs. Each statement of an issue contained in the Matrix has been

agreed upon by the parties unless otherwise indicated. When the agreed upon statement reflects a revision to the statement contained in the Petition, this is noted in the attached Matrix. In the instances in which the parties do not agree on the particular statement of an issue, the Matrix lists both BellSouth's statement and the CLECs'. A number of issues identified in the Petition have been resolved since the filing of the Petition. In each such instance, the issue number remains in the attached Matrix (so that it matches the numbering of the matrix attached to the Petition), but the statement of the issue and the parties' respective positions have been replaced by a notation that the issue has been resolved.

16. The resolved and unresolved provisions of the Interconnection Agreement are accurately reflected in Exhibit B to this Answer. Exhibit B may not reflect language agreed to or other changes that occurred in the last three business days before the filing of this Answer.

17. BellSouth has no objection to the Commission considering procedural requests of the type set forth in Paragraph 22 of the Petition, so long as BellSouth receives notice of any specific request by the Petitioners and is provided an opportunity to address any such request.

18. In response to Paragraph 23, BellSouth admits that the remaining unresolved issues require arbitration by the Commission.

19. BellSouth denies that the CLECs are entitled to the relief requested in the "Wherefore" clause of the Petition. BellSouth also states that the Commission should reject the CLECs' positions on each and every one of the issues set forth in the Petition and, instead, should adopt BellSouth's positions on each and every issue.

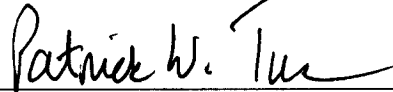
20. BellSouth notes that national and state telecommunications law and policy is in a state of flux and could potentially impact even those provisions of the parties' Interconnection Agreement that are not currently in dispute. In the event changes and/or clarifications of the law

impact the disputed and/or undisputed provisions of the parties' Interconnection Agreement (and the parties are unable to agree on how any such changes and/or clarifications are to be incorporated into the parties' Interconnection Agreement), BellSouth reserves the right to seek further redress from the Commission on those issues.

21. BellSouth denies each and every allegation in the Petition not expressly admitted herein, and demands strict proof thereof.

Respectfully submitted, this 8th day of March 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.



PATRICK W. TURNER
1600 Williams Street
Columbia, South Carolina 29201
(803) 401-2900



R. DOUGLAS LACKEY
J. PHILLIP CARVER
BellSouth Center – Suite 4300
675 West Peachtree Street, N.E.
Atlanta, Georgia 30375
(404) 335-0710

EXHIBIT A

**SC PSC DOCKET NO. 2004-42-C
BELLSOUTH TELECOMMUNICATIONS, INC'S
MATRIX OF UNRESOLVED ISSUES AND POSITIONS**

ITEM No.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
GT&Cs (MAIN)					
1	G-1	1.6	<i>What should be the effective date of future rate impacting amendments?</i>	Future amendments incorporating Commission-approved rates should be effective as of the effective date of the Commission order, if an amendment is requested within 30 calendar days of that date. Otherwise, such amendments should be effective 10 calendar days after request.	Future amendments incorporating Commission-approved rates should be effective ten (10) calendar days after the date of the last signature executing the amendment.
2	G-2	1.7	<p><i>BellSouth Issue Statement:</i> How should “End User” be defined for purposes of attachment 2 of this Agreement?</p> <p><i>CLEC Issue Statement:</i> How should “End User” be defined?</p>	The term “End User” should be defined as “the customer of a Party”.	The Parties have not discussed the definition for “End User” other than in the context of high-capacity EELs. Since the issue as stated by the CLECs and raised in the General Terms and Conditions of the Agreement has never been discussed by the Parties, the issue is not appropriate for arbitration. The term End User should be defined as it is customarily used in the industry; that is, the ultimate user of the telecommunications service.

ITEM No.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELL SOUTH POSITION
3	G-3	10.2	<i>Should the agreement contain a general provision providing that BellSouth shall take financial responsibility for its own actions in causing, or contributing to unbillable or uncollectible CLEC revenue in addition to specific provisions set forth in Attachments 3 and 7?</i>	YES, BellSouth should be financially liable for causing, failing to prevent, or contributing to unbillable or uncollectible CLEC revenue. A general provision complements the specific provisions contained in Attachments 3 and 7.	NO. The Parties have negotiated specific provisions in Attachments 3 and 7 addressing responsibility for billing records deficiencies. Therefore, this additional provision is unnecessary.
4	G-4	10.4.1	<i>What should be the limitation on each Party's liability in circumstances other than gross negligence or willful misconduct?</i>	In cases other than gross negligence and willful misconduct by the other party, or other specified exemptions as set forth in CLECs' proposed language, liability should be limited to an aggregate amount over the entire term equal to 7.5% of the aggregate fees, charges or other amounts paid or payable for any and all services provided or to be provided pursuant to the Agreement as of the day immediately preceding the date of assertion or filing of the applicable claim or suit. CLECs' proposal represents a hybrid between limitation of liability provisions typically found in commercial contracts between sophisticated buyers and sellers, in the absence of overwhelming market dominance by one party, and the effective elimination of liability provision proposed by BellSouth.	The industry standard limitation of liability should apply, which limits the liability of the provisioning party to a credit for the actual cost of the services or functions not performed or improperly performed.

ITEM No.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
5	G-5	10.4.2	<p><i>BellSouth Issue Statement:</i> <i>If the CLEC elects not to place in its contracts with end users and/or tariffs standard industry limitations of liability, who should bear the risks that result from this business decision?</i></p> <p><i>CLEC Issue Statement:</i> <i>Should each Party be required to include specific liability-eliminating terms in all of its tariffs and End User contracts (past, present and future), and, to the extent that a Party does not or is unable to do so, should it be obligated to indemnify the other Party for liabilities not eliminated?</i></p>	NO, BellSouth should not be able to dictate the terms of service between CLEC and its End Users by, among other things, holding CLEC liable for failing to mirror BellSouth's limitation of liability and indemnification provisions in CLEC's End User tariffs and/or contracts. To the extent that a Party does not, or is unable to, include specific elimination-of-liability terms in all of its tariffs and End User contracts (past, present and future), and provided that the non-inclusion of such terms is commercially reasonable, that Party should not be required to indemnify and reimburse the other Party for that portion of the loss that would have been limited had the first Party included in its tariffs and contracts the elimination-of-liability terms that such other Party included in its tariffs at the time of such loss.	If a CLEC elects not to limit its liability to its end users/customers in accordance with industry norms, the CLEC should bear the risk of loss arising from that business decision.
6	G-6	10.4.4	<p><i>BellSouth Issue Statement:</i> <i>How should indirect, incidental or consequential damages be defined for purposes of the Agreement?</i></p> <p><i>CLEC Issue Statement:</i></p>	NO, the Agreement, by its nature, contemplates that End Users will be served via the exchange of traffic through interconnection arrangements and through the use of UNEs and Other Services purchased. Damages to End Users that result directly and in a reasonably foreseeable manner from BellSouth's (or	What damages constitute indirect, incidental or consequential damages is a matter of state law at the time of the claim and should not be dictated by a party to an agreement.

ITEM No.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
			<i>Should limitation on liability for indirect, incidental or consequential damages be construed to preclude liability for claims or suits for damages incurred by CLEC's (or BellSouth's) End Users to the extent such damages result directly and in a reasonably foreseeable manner from BellSouth's (or CLEC's) performance obligations set forth in the Agreement?</i>	CLEC's) performance of obligations set forth in the Agreement that were not and are not directly and proximately caused by or are the result of CLEC's (or BellSouth's) failure to act at all relevant times in a commercially reasonable manner in compliance with CLEC's (or BellSouth's) duties of mitigation with respect to such damage should be considered direct under the Agreement for simple negligence purposes.	
7	G-7	10.5	<i>What should the indemnification obligations of the parties be under this Agreement?</i>	The Party providing service under the Agreement should be indemnified, defended and held harmless by the Party receiving services against any claim for libel, slander or invasion of privacy arising from the content of the receiving Party's own communications. Similarly, the Party receiving services under the Agreement should be indemnified, defended and held harmless by the Party providing services against any claims, loss or damage to the extent arising from: (1) the providing Party's failure to abide by Applicable Law, or (2) injuries or damages arising out of or in connection with this Agreement to the extent caused by the providing Party's	The Party receiving services should indemnify the party providing services from (1) any claim loss or damages from claims for libel, slander or invasion of privacy arising from the content of the receiving party's own communications, or (2) any claim, loss or damage claimed by the end user of the Party receiving services arising out of the Agreement.

ITEM No.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
				negligence, gross negligence or willful misconduct.	
8	G-8	11.1	<i>What language should be included in the Agreement regarding a Party's use of the other Party's name, service marks, logo and trademarks?</i>	Given the complexity of and variability in intellectual property law, this nine-state Agreement should simply state that no patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by the Agreement and that a Party's use of the other Party's name, service mark and trademark should be in accordance with Applicable Law. The Commission should not attempt to prejudge intellectual property law issues, which at BellSouth's insistence, the Parties have agreed are best left to adjudication by courts of law (see, GTC, Sec. 11.5).	Except for factual references to the BellSouth name as necessary to respond to direct inquiries from customers or potential customers regarding the source of the underlying services or the identity of repair technicians, CLECs should not be entitled to use BellSouth's name, service mark, logo or trademark. This position is consistent with prior rulings of this Commission. <i>See Order on Arbitration, In Re: Petition of IDS Telecom, LLC for Arbitration of a Proposed Interconnection Agreement with BellSouth Telecommunications, inc. Pursuant to 47 U.S.C. Section 252(b)</i> , Order No. 2001-186 in Docket No. 2001-19-C at pp. 6-12 (April 3, 2001).
9	G-9	13.1	<i>BellSouth Issue Statement:</i> <i>Should a party be allowed to take a dispute concerning the interpretation or implementation of any provision of the agreement to a Court of law for resolution without first exhausting its administrative remedies?</i>	YES, either Party should be able to petition the Commission, the FCC or a court of law for resolution of a dispute. Given the difficulties experienced in achieving efficient regional dispute resolution, and the ongoing debate as to whether state commissions have jurisdiction to enforce agreements (CLECs do not dispute that authority) and as to whether the FCC will engage in such enforcement (or not), no legitimate dispute resolution venue should	This Commission or the FCC should resolve disputes as to the interpretation of the Agreement or as to the proper implementation of the Agreement. A party should be entitled to seek judicial review of any ruling made by the Commission or the FCC concerning this Agreement, but should not be entitled to take such disputes to a Court of law without first exhausting its administrative remedies.

ITEM No.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
			<i>CLEC Issue Statement:</i> <i>Should a court of law be included among the venues at which a Party may seek dispute resolution under the Agreement?</i>	be foreclosed. There is no question that courts of law have jurisdiction to entertain such disputes (see GTC, Sec. 11.5); indeed, in certain instances, they may be better equipped to adjudicate a dispute and may provide a more efficient alternative to litigating in up to 9 different jurisdictions or to waiting for the FCC to decide whether it will or won't accept an enforcement role given the particular facts.	
10	G-10	17.4	<i>This issue has been resolved.</i>		
11	G-11	19, 19.1	<i>This issue has been resolved.</i>		
12	G-12	32.2	<i>Should the Agreement explicitly state that all existing state and federal laws, rules, regulations, and decisions apply unless otherwise specifically agreed to by the Parties?</i>	YES, nothing in the Agreement should be construed to limit a Party's rights or exempt a Party from obligations under Applicable Law, as defined in the Agreement, except in such cases where the Parties have explicitly agreed to a limitation or exemption. This is a basic legal tenet and is consistent with both federal and Georgia law (agreed to by the parties), and it should be explicitly stated in the Agreement in order to avoid unnecessary disputes and litigation that has plagued the Parties in the past.	No. This Agreement constitutes the contractual obligations of the Parties to each other and should not be subject to further negotiation subsequent to being fully negotiated and arbitrated.
13	G-13	32.3	<i>How should the Parties deal with non-negotiated deviations from the state Commission- approved</i>	Any non-negotiated deviations from ordered rates should be corrected by retroactive true-up to the effective date of the Agreement within 30 calendar days of the	Any non-negotiated deviations from ordered rates should be changed by amendment of the agreement upon discovery by a party and should be

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			<i>rates in the rate sheets attached to the Agreement?</i>	date the error was identified by either Party.	applied prospectively regardless of whether the rate increases or decreases as a result of such amendment.
14	G-14	34.2	<i>Can either Party require, as a prerequisite to performance of its obligations under the Agreement, that the other Party adhere to any requirement other than those expressly stipulated in the Agreement or mandated by Applicable Law?</i>	NO, the Parties should not be permitted to hold performance hostage to terms not included in the Agreement and not mandated by Applicable Law. More specifically, neither Party should, as a condition or prerequisite to such Party's performance of its obligations under the Agreement, impose or insist upon the other Party's (or any of its End Users') adherence to any requirement or obligation other than as expressly stipulated in this Agreement or as otherwise mandated by Applicable Law.	YES. The Parties are free to negotiate with each other as they may with third parties. Neither Party should use this agreement to interfere with a third party's contractual rights and obligations.
15	G-15	45.2	<i>If BellSouth changes a provision of one or more of its Guides that would cause CLEC to incur a material cost or expense to implement the change, should the CLEC notify BellSouth, in writing, if it does not agree to the change?</i>	NO, if the contemplated change to one or more of BellSouth's Guides would cause CLEC to incur a material cost or expense to implement the change, BellSouth and CLEC should negotiate an amendment to the Agreement to incorporate such change.	YES. BellSouth's Guides apply to all CLEC's equally. If BellSouth allows a CLEC the right to opt out of the requirements of a Guide, the CLEC should notify BellSouth of its decision to do so. This position is consistent with prior rulings of this Commission. <i>See Order on Arbitration, In Re Petition of HTC Communications, Inc. for Arbitration of an Interconnection Agreement with Verizon South, Inc., Order No. 2002-450 in Docket No. 2002-66-C at p. 8 (June 12, 2002).</i>
16	G-16	45.3	<i>BellSouth Issue Statement:</i> <i>If a tariff is referenced in the</i>	NO, unreasonable and/or discriminatory revisions to BellSouth's tariffs should not affect the obligations set forth in the	If a service is purchased pursuant to a tariff that is referenced in the Agreement, the terms of that tariff at the

ITEM No.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELLSOUTH POSITION
			<p><i>Agreement, what effect should subsequent changes to the tariff have on the Agreement?</i></p> <p>CLEC Issue Statement: <i>Should the obligations set forth in the Agreement be impacted by unreasonable and/or discriminatory revisions to BellSouth tariffs?</i></p>	<p>Agreement. Specifically, to the extent that tariff changes are inconsistent with the provisions of the Agreement, or are unreasonable or discriminatory, they should not supersede the Agreement. Such changes may only become part of the Agreement by written amendment negotiated and/or arbitrated by the Parties.</p>	<p>time of the purchase should apply. This Commission already has procedures in place pursuant to which BellSouth may revise its tariffs, and pursuant to which a CLEC, or any other party, may object to such revisions. There should be no require-ment that tariff revisions that occur after the Agreement becomes effective be incorporated into the Agreement by amendment.</p>
RESALE (ATTACHMENT 1)					
17	1-1	3.19	<p><i>How much advance notice must BellSouth give CLEC before discontinuing a service or increasing the price of a resold service?</i></p>	<p>BellSouth must provide electronically to CLEC forty-five (45) days advance notice of changes to the prices, terms or conditions of services available for Resale, including but not limited to, discontinuances and price increases.</p>	<p>If a CLEC is under a commission requirement to provide notice to its end users of price increases or discontinuance of services, BellSouth should provide 10 days notice prior to the CLEC's obligation to provide notice to its end users.</p>
18	1-2	11.6.6	<p><i>This issue has been resolved.</i></p>		
NETWORK ELEMENTS (ATTACHMENT 2)					
19	2-1	1.1	<p><i>This Issue has been resolved.</i></p>		
20	2-2	1.2	<p><i>This Issue has been resolved.</i></p>		

ITEM No.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELL SOUTH POSITION
21	2-3	1.4.2	<i>This issue has been resolved.</i>		
22	2-4	1.4.3	<p>(A) Should CLEC be required to submit a BFR/NBR to convert a UNE or Combination (or part thereof) to other services or tariffed BellSouth access services?</p> <p>(B) In the event of such conversion, what rates should apply?</p>	<p>(A) NO, CLEC should be allowed to submit an LSR or ASR, as appropriate.</p> <p>(B) For such conversion, the non-recurring charges should be as set forth in Exhibit A of Attachment 2 or the relevant tariff, as appropriate. In addition, such charges should be commensurate with the work required to effectuate the conversion (cross connect only, billing change/records update only, etc.).</p>	<p>(A) No. A CLEC should be allowed to submit a spreadsheet consisting of information that identifies the requested circuits to be converted from a UNE or a UNE combination to a wholesale tariffed service. BellSouth should accept a spreadsheet (and a commingling ordered document that indicates which part is to be filled as a UNE, if applicable) and convert the transport from a UNE or UNE combination to wholesale tariffed services in total or in part.</p> <p>(B) There should be no charge for the conversion itself, but other applicable charges should apply.</p>
23	2-5	1.5	<p>(A) In the event UNEs or Combinations are no longer offered pursuant to, or are not in compliance with, the terms set forth in this Agreement, which Party should bear the obligation of identifying those service arrangements?</p>	<p>(A) In the event UNEs or Combinations are no longer offered pursuant to, or are not in compliance with, the terms set forth in the Agreement, it should be BellSouth's obligation to identify the specific service arrangements that it insists be transitioned to other services pursuant to Attachment 2.</p> <p>(B) If CLEC does not submit a rearrange or disconnect order within 30 days, BellSouth</p>	<p>(A) In the even UNEs or Combinations are no longer offered pursuant to, or are not in compliance with, the terms set forth in the Agreement, it should be CLEC's obligation to identify the specific service arrangements that must be transitioned to other services pursuant to Attachment 2. CLEC should be responsible for ensuring it is not violating the agreement.</p>

ITEM No.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELL SOUTH POSITION
			<p>(B) What recourse may BellSouth take if CLEC does not submit a rearrange or disconnect order within 30 days?</p> <p>(C) What rates, terms and conditions should apply in the event of a termination, re-termination, or physical rearrangements of circuits?</p>	<p>may disconnect such arrangements or services without further notice, provided that CLEC has not notified BellSouth of a dispute regarding the identification of specific service arrangements as being no longer offered pursuant to, or are not in compliance with, the terms set forth in the Agreement.</p> <p>(C) For arrangements that require a re-termination or other physical rearrangement of circuits to comply with the terms of the Agreement, non-recurring charges for the applicable UNE or cross connect from Exhibit A of Attachment 2 should apply. Disconnect charges should not apply to services that are being physically rearranged or re-terminated.</p>	<p>(B) If orders to rearrange or disconnect those arrangements or services are not received by the thirty-first (31st) calendar day after the Effective Date of this Agreement, BellSouth may disconnect those arrangements or services without further notice.</p> <p>(C) For arrangements that require a re-termination or other physical rearrangement of circuits to comply with the terms of this Agreement, nonrecurring charges for the applicable UNE(s) from Exhibit A of this Attachment will apply. To the extent re-termination or other physical rearrangement is required in order to comply with a tariff or separate agreement, the applicable rates, terms and conditions of such tariff or separate agreement shall apply. Applicable disconnect charges will apply to a UNE/Combination that is rearranged or disconnected.</p>
24	2-6	1.5.1	<p>BellSouth Issue Statement: Should CLECs be required to follow applicable industry standards and BellSouth Technical References when</p>	<p>NO, unless permitted under Applicable Law, BellSouth may not impose limitations on CLEC's ability to access and use UNEs.</p>	<p>Yes, CLECs should follow applicable industry standards and BellSouth technical references in accessing UNEs. For example, the FCC does not prescribe the particular grounding requirements for a NID but rather leaves</p>

ITEM No.	ISSUE #	§	UNRESOLVED ISSUE	CLEC POSITION	BELL SOUTH POSITION
			<p><i>using UNEs?</i></p> <p>CLEC Issue Statement: <i>Should BellSouth be entitled to impose limitations on CLEC use of UNEs not permitted by Applicable Law?</i></p>		<p>it to BellSouth and CLEC to follow industry technical standards.</p>
25	2-7	1.6.1	<p><i>What rates, terms and conditions should apply for Routine Network Modifications pursuant to 47 C.F.R. § 51.319(a)(8) and (e)(5)?</i></p>	<p>If BellSouth has anticipated such Routine Network Modifications and performs them during normal operations, then BellSouth should perform such Routine Network Modifications at no additional charge. If BellSouth has not anticipated a requested or necessary network modification as being a Routine Network Modification and, as such, has not recovered the costs of such Routine Network Modifications in the rates set forth in Exhibit A of Attachment 2, then BellSouth should notify CLEC of the required Routine Network Modification and should request that CLEC submit a Service Inquiry to have the work performed. Each <i>unique</i> request should be handled as a project on an individual case basis. BellSouth should provide a TELRIC-compliant price quote for the request, and upon receipt of a firm order from CLEC, BellSouth should perform the Routine</p>	<p>BellSouth will perform Routine Network Modifications in accordance with FCC 47 C.F.R. 51.319(a)(8) and (e)(5). Except to the extent expressly provided otherwise in Attachment 2, if BellSouth has anticipated such Routine Network Modifications and performs them during normal operations and has recovered the costs for performing such modifications through the rates set forth in Exhibit A of Attachment 2, then BellSouth shall perform such Routine Network Modifications at no additional charge. Routine Network Modifications shall be performed within the intervals established for the UNE and subject to the performance measurements and associated remedies set forth in Attachment 9 to the extent such Routine Network Modifications were anticipated in the setting of such intervals. If</p>

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				Network Modification.	BellSouth has not anticipated a requested network modification as being a Routine Network Modification and has not recovered the costs of such Routine Network Modifications in the rates set forth in Exhibit A of this Attachment, then CLEC must submit a service inquiry (SI) to have the work performed. Each request will be handled as a project on an individual case basis. BellSouth will provide a price quote for the request, and upon receipt of payment from CLEC, BellSouth shall perform the Routine Network Modification.
26	2-8	1.7	<i>Should BellSouth be required to commingle UNEs or Combinations with any service, network element or other offering that it is obligated to make available pursuant to Section 271 of the Act?</i>	YES, BellSouth should be required to commingle UNEs or Combinations with any service, network element, or other offering that it is obligated to make available pursuant to Section 271 of the Act.	No, consistent with the FCC's errata to the Triennial Review Order, there is no requirement to commingle UNEs or combinations with services, network elements or other offerings under Section 271 of the Act.
27	2-9	1.8.3	<i>When multiplexing equipment is attached to a commingled circuit, should the multiplexing equipment be billed per the jurisdictional authorization</i>	When multiplexing equipment is attached to a commingled circuit, the multiplexing equipment should be billed from the same jurisdictional authorization (Agreement or tariff) as the lower bandwidth service.	When multiplexing equipment is attached to a commingled circuit, the multiplexing equipment should be billed from the same jurisdictional authorization (Agreement or tariff) as the higher bandwidth service. The

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			<i>(Agreement or tariff) of the lower or higher bandwidth service?</i>		central office Channel Interface should be billed from the same jurisdictional authorization as the lower-level jurisdiction.
28	2-10	1.9.4	<i>Should the recurring charges for UNEs, Combinations and Other Services be prorated based upon the number of days that the UNEs are in service?</i>	YES, the recurring charges for UNEs, Combinations, and Other Services should be prorated based upon the number of days that the UNEs, Combinations, and Other Services are in service.	No, the recurring charges for UNEs, Combinations, and Other Services should be prorated based upon the number of days that the UNEs, Combinations, and Other Services are in service after a minimum period of service has expired.
29	2-11	2.1.1	<i>This issue has been resolved.</i>		
30	2-12	2.1.1.1	<i>Should the Agreement include a provision declaring that facilities that terminate to another carrier's switch or premises, a cell site, Mobile Switching Center or base station do not constitute loops?</i>	NO, the Agreement should not include a provision declaring that facilities that terminate to another carrier's switch or premises, a cell site, Mobile Switching Center, or base station do not constitute loops. Such a provision would be inconsistent with the FCC's Triennial Review Order.	Yes. By the FCC's definition, a loop terminates at the End User's customer premises, not a cell site, carrier's switch/premises, mobile switching center or base station.
31	2-13	2.1.1.2	<i>BellSouth Issue Statement:</i> <i>Should BellSouth be required to unbundled the low</i>	NO, CLEC should not be required to purchase the entire bandwidth of a Loop, except where required by Applicable Law.	Yes. CLEC should be required to purchase the entire bandwidth of a Loop. In paragraph 270 of the TRO, the FCC specifically denied an effort to

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			<p><i>frequency portion of the loop?</i></p> <p>CLEC Issue Statement: <i>Should the Agreement require CLEC to purchase the entire bandwidth of a Loop, even in cases where such purchase is not required by Applicable Law?</i></p>		<p>separate the bandwidth into upper and lower bands. Moreover, this issue is not appropriate for arbitration in this proceeding because it involves a request by the CLECs that is not encompassed within BellSouth's obligations pursuant to Section 251 of the Act.</p>
32	2-14	2.1.2, 2.1.2.1, 2.1.2.2	<p><i>(A) Should the Agreement contain provisions categorizing loops as either mass market loops or enterprise market loops?</i></p> <p><i>(B) If so, what should such provisions say?</i></p>	<p>(A) YES, the Agreement should contain provisions categorizing loops as either mass market loops or enterprise market loops.</p> <p>(B) Such provisions should state that there are two categories of UNE loops, namely, Mass Market Loops and Enterprise Loops. The provisions should further define Mass Market Loops as loops that deliver narrow-band service, such as POTS, facsimile services and DS0 level services as well as broadband services such as DSL services to residential and very small business customers. In addition, there should be a provision listing the three types of Mass Market Loops: copper loops, fiber-to-the-home loops, and hybrid fiber/copper loops.</p> <p>The provision should define Enterprise Market Loops as loops that deliver narrow-</p>	<p>(A) No, the Agreement should recognize that the FCC in the TRO identified two categories of markets that would use Loops at different bandwidths and quantities. It is not necessary to categorize loops into those that are available in the "mass market" and those that are available in the "enterprise market" and indeed to do so simply adds ambiguity to the Agreement. Pursuant to the Agreement, and in accordance with the FCC's rules, (which do not make reference to the "mass market" and the "enterprise market"), BellSouth will offer the loops that the FCC has ordered.</p> <p>(B) There are two (2) markets within which Loops are provisioned: Mass Markets and Enterprise Markets.</p>

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				band and broadband services to small, medium and large-sized businesses. Similarly, there should be a provision setting forth that Enterprise Loops, including DS1, DS-3/STS loops, and dark fiber loops are not subject to any of the restrictions applicable to Mass Market Loops, regardless of the transmission medium over which they are provided.	
33	2-15	2.2.3	<i>Is unbundling relief provided under FCC Rule 319(a)(3) applicable to Fiber-to-the-Home Loops deployed prior to October 2, 2003?</i>	NO, the unbundling relief provided under FCC Rule 319(a)(3) is only applicable to Fiber-to-the-Home Loops deployed on or after October 2, 2003 (the effective date of the FCC's Triennial Review Order).	Yes, the FCC found that for Fiber-to-the-Home (FTTH) there is no impairment on a national basis and did not make this decision contingent upon a deployment date.
34	2-16	2.3.3	<i>This Issue has been resolved.</i>		
35	2-17	2.4.3, 2.4.4	<p><i>(A) What rates should apply to testing and dispatch performed by BellSouth in response to a CLEC trouble report when no trouble is ultimately found to exist?</i></p> <p><i>(B) What rate should apply when BellSouth is required to dispatch to an end user location more than once</i></p>	TELRIC-compliant rates to be approved by the Commission and incorporated in Exhibit A of Attachment 2 should apply to testing and dispatch performed by BellSouth in response to a CLEC trouble report and in order to confirm the working status of a UNE Loop.	<p>(A) The trouble determination charge from the applicable tariff should apply.</p> <p>(B) The trouble determination charge from the applicable tariff should apply.</p>

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			<p><i>due to incorrect or incomplete information?</i></p> <p><i>[Issue restated by agreement of the parties 3/8/04]</i></p>		
36	2-18	2.12.1	<p>(A) <i>How should line conditioning be defined in the Agreement?</i></p> <p>(B) <i>What should BellSouth's obligations be with respect to line conditioning?</i></p>	<p>(A) Line Conditioning should be defined in the Agreement as set forth in FCC Rule 47 CFR 51.319 (a)(1)(iii)(A).</p> <p>(B) BellSouth should perform line conditioning in accordance with FCC Rule 47 C.F.R. 51.319(a)(1)(iii). Insofar as it is technically feasible, BellSouth should test and report troubles for all the features, functions, and capabilities of conditioned copper lines, and may not restrict its testing to voice transmission only.</p>	<p>(A) Line Conditioning is defined as routine network modification that BellSouth regularly undertakes to provide xDSL services to its own customers.</p> <p>(B) BellSouth should perform line conditioning functions as defined in 47 C.F.R. 51.319(a)(1)(iii) to the extent the function is a routine network modification that BellSouth regularly undertakes to provide xDSL to its own customers.</p>
37	2-19	2.12.2	<p><i>BellSouth Issue Statement:</i> <i>Should the Agreement contain specific provisions limiting the availability of load coil removal to copper loops of 18,000 feet or less?</i></p> <p><i>CLEC Issue Statement:</i> <i>Should the Agreement contain specific provisions</i></p>	<p>NO, the agreement should not contain specific provisions limiting the availability of Line Conditioning to copper loops of 18,000 feet or less in length.</p>	<p>Yes, current industry technical standards require the placement of load coils on copper loops greater than 18,000 feet in length to support voice service and BellSouth does not remove them for BellSouth retail end users on copper loops of over 18,000 feet in length; therefore, such a modification would not constitute a routine network modification and is not required by the FCC.</p>

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			<i>limiting the availability of Line Conditioning to copper loops of 18,000 feet or less?</i>		
38	2-20	2.12.3, 2.12.4	<i>Under what rates, terms and conditions should BellSouth be required to perform Line Conditioning to remove bridged taps?</i>	Any copper loop being ordered by CLEC which has over 6,000 feet of combined bridged tap will be modified, upon request from CLEC, so that the loop will have a maximum of 6,000 feet of bridged tap. This modification will be performed at no additional charge to CLEC. Line conditioning orders that require the removal of other bridged tap should be performed at the rates set forth in Exhibit A of Attachment 2.	For any copper loop being ordered by CLEC which has over 6,000 feet of combined bridged tap will be modified, upon request from CLEC, so that the loop will have a maximum of 6,000 feet of bridged tap. This modification will be performed at no additional charge to CLEC. Line conditioning orders that require the removal of bridged tap that serves no network design purpose on a copper loop that will result in a combined level of bridged tap between 2,500 and 6,000 feet will be performed at the rates set forth in Exhibit A of this Attachment. CLEC may request removal of any unnecessary and non-excessive bridged tap (bridged tap between 0 and 2,500 feet which serves no network design purpose), at rates pursuant to BellSouth's Special Construction Process contained in BellSouth's FCC No. 2 as mutually agreed to by the Parties. BellSouth is only required to perform line conditioning that it performs for its own xDSL customers and is not required to create a superior network for CLECs.

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					Moreover, this issue is not appropriate for arbitration in this proceeding because it involves a request by the CLECs that is not encompassed within BellSouth's obligations pursuant to Section 251 of the Act.
39	2-21	2.12.6	<p><i>BellSouth Issue Statement:</i> <i>(A) Should BellSouth be required to modify a loop in such a way that it no longer meets the technical parameters of the original Loop?</i></p> <p><i>(B) If so, should the resulting modified Loop be maintained as a non-service -specific Unbundled Copper Loop?</i></p> <p><i>CLEC Issue Statement:</i> <i>(A) Should the Agreement contain a provision barring Line Conditioning that would result in the modification of a Loop in such a way that it no longer meets technical parameters of the original Loop?</i></p>	<p>(A) NO, CLEC should not be barred from requesting Line Conditioning that would result in the modification of a Loop in such a way that it no longer meets the technical parameters of the original Loop.</p> <p>(B) YES, the resulting modified Loop should be maintained as a non-service-specific Unbundled Copper Loop.</p>	<p>(A) No, modification of a Loop in such a way that it no longer meets the technical parameters of the original Loop is against industry technical standards and since BellSouth would not do this for BellSouth retail End Users this Line Conditioning would not fit the FCC's definition described in paragraph 643 of the TRO. BellSouth is only required to perform line conditioning that it performs for its own xDSL customers and is not required to create a superior network for CLECs.</p> <p>(B) Not applicable as modification of the Loop to this extent does not meet the FCC's definition of Line Conditioning. Moreover, this issue is not appropriate for arbitration in this proceeding because it involves a request by the CLECs that is not encompassed within BellSouth's obligations pursuant to Section 251 of the Act.</p>

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			<i>(B) If not, should the resulting modified Loop be maintained as a non-service -specific Unbundled Copper Loop?</i>		
40	2-22	2.14.3.1.1	<p><i>Should BellSouth be required to allow CLEC to connect its Loops directly to BellSouth's multi-line residential NID enclosures that have inactive loops attached?</i></p> <p><i>[Issue restated by agreement of the parties. 3/8/04]</i></p>	YES, the Commission should order BellSouth to allow CLEC to connect its Loops directly to BellSouth's multi-line residential NID enclosures that have spare terminations available.	To the extent a State Commission has ruled on this issue, BellSouth will, of course, comply with that ruling. Otherwise, no, BellSouth should only be required to allow CLEC to connect its Loops directly to BellSouth's multi-line residential NID enclosures that have spare terminations available.
41	2-23	2.16.2.2, 2.16.2.3.1-5, 2.16.2.3.7-12	<p>Issue 41(A) has been resolved.</p> <p><i>(B) Should the obligation to provide UNTW apply when such premise wiring is leased? (2.16.2.2, 2.16.2.3.1)</i></p> <p>BellSouth Issue Statement (C-E):</p> <p><i>(C) Should BellSouth be required to install new network terminating wire</i></p>	<p>(B) YES, BellSouth's legal obligation to provide UNTW applies even where the premises wiring is leased.</p> <p>(C) NO, to the extent BellSouth would install new or additional UNTW beyond existing UNTW upon request from one of its own End Users, or is otherwise required to do so in order to comply with FCC or Commission rules and orders, BellSouth should be obligated to provide access to such new or additional UNTW beyond existing UNTW.</p>	<p>(B) No. BellSouth will not control UNTW in every case in which it leases UNTW; however, to the extent BellSouth does control the UNTW as a result of the lease, BellSouth will be obligated to provide access due to its control of the UNTW.</p> <p>(C) No. BellSouth is not obligated to build a network for CLECs. Moreover, the FCC's definition of routine network modifications does not include the construction of a network.</p>

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			<p><i>for the use of the CLEC? (2.16.2.3.2)</i></p> <p><i>(D) Should the CLEC be responsible for ensuring that a customer that has asked to switch service to the CLEC is no longer obtaining BellSouth's service, or another carrier's service on that pair?</i></p> <p><i>(E) Should a time limit be placed on the CLEC's obligation to reimburse costs associated with removing access terminals and restoring the property to its original state (upon request of property owner)? (2.16.2.3.7)</i></p> <p>CLEC Issue Statement (C-E):</p> <p><i>(C) Should the obligation to provide access to UNTW be limited to existing UNTW? (2.16.2.3.2)</i></p> <p><i>(D) Should CLECs have to</i></p>	<p>(D) CLEC should not be required to "ensure" that a customer that has asked to switch service to CLEC is no longer using another carrier's service on a particular pair. Rather, a provision obligating CLEC to use commercially reasonable efforts to access only an "available pair" should be sufficient.</p> <p>(E) YES, there should be a time limit on reimbursement obligations. Specifically, CLEC should be responsible for costs associated with removing access terminals and restoring the property to its original state only when the property owner objects to and demands removal of access terminal installations that are in progress or within thirty (30) calendar days of completion.</p>	<p>(D) Yes. CLEC should ensure that the pair it intends to use is not active; otherwise it will disconnect the End User's service.</p> <p>(E) No. BellSouth is installing the terminal at the request of, and upon the authorization obtained by, the CLEC. There should be no limit on BellSouth's ability to recover the costs of removal of the terminal which it would otherwise be unable to recover. Alternatively, BellSouth should be entitled to bill for the costs of removal upon installation of the terminal.</p>

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			<p><i>agree to language that requires them to “ensure” that a customer that has asked to switch service to CLEC is already no longer using another carrier’s service on that pair – or – will language obligating CLEC to use commercially reasonable efforts to access only an “available pair” suffice? (2.16.2.3.5)</i></p> <p><i>(E) Should a time limit be placed on the obligation to reimburse costs associated with removing access terminals and restoring the property to its original state (per request of property owner)? (2.16.2.3.7)</i></p>		
42	2-24	2.17.3.5	<p><i>Should BellSouth be required to provide access to Dark Fiber Loops for test access and testing at any technically feasible point?</i></p>	<p>YES, BellSouth should be required to provide access to Dark Fiber Loops for test access and testing at any technically feasible point, the termination point within a serving wire center, and CLEC’s End User’s premises.</p>	<p>Subsequent to CLEC acceptance of Dark Fiber, BellSouth should allow the CLEC access to the Dark Fiber at its end points for testing. If a Dark Fiber trouble occurs thereafter, the CLEC should report the trouble to BellSouth and BellSouth will isolate and correct the trouble.</p>

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43	2-25	2.18.1.4	<p><i>BellSouth Issue Statement:</i> Under what circumstances should BellSouth be required to provide CLEC with Loop Makeup information on a facility used or controlled by another CLEC?</p> <p><i>CLEC Issue Statement:</i> Under what circumstances should BellSouth provide CLEC Loop Makeup information?</p>	BellSouth should provide CLEC Loop Makeup information on a particular loop upon request by CLEC. Such access should not be contingent upon receipt of an LOA from a third party carrier.	BellSouth should provide CLEC Loop Makeup information on a facility used or controlled by another CLEC only upon receipt of an LOA authorizing the release of that information from the CLEC using the facility.
44	2-26	3.6.5	<i>This Issue has been resolved.</i>		
45	2-27	3.10.3	<i>What should be CLEC's indemnification obligations under a line splitting arrangement?</i>	If CLEC is purchasing line splitting, and it is not the data provider, CLEC should indemnify, defend and hold harmless BellSouth from and against any claims, losses, actions, causes of action, suits, demands, damages, injury, and costs (including reasonable attorney fees) reasonably arising or resulting from the actions taken by the data provider in connection with the line splitting arrangement, except to the extent caused by BellSouth's gross negligence or willful misconduct.	If CLEC is not the data provider, CLEC shall indemnify, defend and hold harmless BellSouth from and against any claims, losses, actions, causes of action, suits, demands, damages, injury, and costs including reasonable attorney fees, which arise out of actions related to the data provider.

46	2-28	3.10.4	<p>BellSouth Issue Statement:</p> <p>(A) <i>In cases where in which a CLEC purchases UNEs from BellSouth, should BellSouth be required to provide DSL transport or DSL services (of any kind) to CLEC and its End Users?</i></p> <p>(B) <i>If so, what rates, terms and conditions should apply?</i></p> <p>(C) <i>To the extent the obligation to provide DSL does not arise pursuant to § 251 of the Act and BellSouth is willing to offer these services in compliance with Commission requirements pursuant to a separate agreement or tariff, should the obligations of the parties be included in this agreement?</i></p> <p>CLEC Issue Statement:</p> <p>(A) <i>In cases where CLEC purchases UNEs from</i></p>	<p>(A) YES, in cases where CLEC purchases UNEs from BellSouth, BellSouth should not refuse to provide DSL transport or DSL services (of any kind) to CLEC and its End Users, unless BellSouth has been expressly permitted to do so by the Commission.</p> <p>(B) YES, where BellSouth provides such transport or services to CLEC and its End Users, BellSouth should be required to do so without charge until such time as it produces an amendment proposal and the Parties amend this Agreement to incorporate terms that are no less favorable, in any respect, than the rates, terms and conditions pursuant to which BellSouth provides such transport and services to any other entity.</p>	<p>This issue (including all subparts) is not appropriate for arbitration in this proceeding because it involves a request by the CLECs that is not encompassed within BellSouth's obligations pursuant to Section 251 of the Act. Moreover, the Commission is not authorized to grant the relief requested by the CLECs under state law. <i>See</i> S.C. Code Ann. §58-9-280(G)(1).</p> <p>(A) No. BellSouth should not be required to provide DSL transport or DSL services over UNEs to CLEC and its End Users as BellSouth's DSLAMs are not subject to unbundling. The FCC specifically stated in paragraph 288 of the TRO that they would "not require incumbent LECs to provide unbundled access to any electronics or other equipment used to transmit packetized information."</p> <p>(B) BellSouth elects to offer these services to CLEC, they should be pursuant to a separately negotiated commercial agreement between the parties or a tariff, and should not be subject to arbitration in this proceeding as they are not services required pursuant to Section 251 of the Act.</p>
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			<p><i>BellSouth, should BellSouth be required not to refuse to provide DSL transport or DSL services (of any kind) to CLEC and its End Users, unless BellSouth has been expressly permitted to do so by the Commission?</i></p> <p><i>(B) Where BellSouth provides such transport or services to CLEC and its End Users, should BellSouth be required to do so without charge until such time as it produces an amendment proposal and the Parties amend this Agreement to incorporate terms that are no less favorable, in any respect, than the rates, terms and conditions pursuant to which BellSouth provides such transport and services to any other entity?</i></p>		<p>(C) No. This agreement is an agreement pursuant to Section 251 of the Act and it is not appropriate to require services, not mandated pursuant to Section 251, to be included in this Agreement.</p>
47	2-29	4.2.2	<i>This Issue has been resolved.</i>		
48	2-30	4.5.5	<i>This Issue has been</i>		

			<i>resolved.</i>		
49	2-31	5.2.4	<i>Under what conditions, if any, may BellSouth deny or delay a CLEC request to convert a circuit to a high capacity EEL?</i>	BellSouth may not deny or delay CLEC's request for a high-capacity EEL based upon its own assessment of compliance with eligibility criteria. However, BellSouth may notify CLEC when it detects an order that it does not believe complies with the eligibility criteria. CLEC will then have the option of proceeding with, modifying or canceling such order.	BellSouth should have the right to clarify the order back to CLEC rather than processing the order should the BellSouth representative identify that a service eligibility criteria has been violated.
50	2-32	5.2.5.2.1-7	<p><i>BellSouth Issue Statement:</i> <i>Should the service eligibility criteria for high capacity EELs apply only to circuits provided to end users or to any CLEC customer?</i></p> <p><i>CLEC Issue Statement:</i> <i>Should the high capacity EEL eligibility criteria use the term "customer", as used in the FCC's rules, or "End User"?</i></p>	The high capacity EEL eligibility criteria should be consistent with those set forth in the FCC's rules and should use the term "customer", as used in the FCC's rules. Use of the term "End User" may result in a deviation from the FCC rules to which CLECs are unwilling to agree.	The high capacity EEL eligibility criteria apply only to End User circuits since a loop is a component of the EEL and the FCC definition of a loop requires that it terminate to an "end-user" customer premises.
51	2-33	5.2.6, 5.2.6.1, 5.2.6.2, 5.2.6.2.1, 5.2.6.2.3	<i>(A) How often, and under what circumstances, should BellSouth be able to audit CLEC's records to verify compliance with the high capacity EEL service</i>	<i>(A) BellSouth may, no more frequently than on an annual basis, and only based upon cause, conduct a limited audit of CLEC's records in order to verify compliance with the high capacity EEL service eligibility criteria.</i>	<p><i>(A) BellSouth may, on an annual basis, audit in order to verify compliance with the qualifying service eligibility criteria.</i></p> <p><i>(B) No, a notice requirement is not required by the FCC's TRO.</i></p>

			<p><i>eligibility criteria?</i></p> <p><i>(B) Should there be a notice requirement for BellSouth to conduct an audit and what should the notice include?</i></p> <p><i>(C) Who should conduct the audit and how should the audit be performed?</i></p>	<p>(B) YES, to invoke its limited right to audit, BellSouth should send a Notice of Audit to CLEC, identifying the particular circuits for which BellSouth alleges non-compliance and the cause upon which BellSouth rests its allegations. The Notice of Audit should also include all supporting documentation upon which BellSouth establishes the cause that forms the basis of BellSouth's allegations of noncompliance. Such Notice of Audit should be delivered to CLEC with all supporting documentation no less than thirty (30) days prior to the date upon which BellSouth seeks to commence an audit.</p> <p>(C) The audit should be conducted by a third party independent auditor mutually agreed-upon by the Parties and retained and paid for by BellSouth. The audit should commence at a mutually agreeable location (or locations) no sooner than thirty (30) days after the parties have reached agreement on the auditor. In addition, the audit should be performed in accordance with the standards established by the American Institute for Certified Public Accountants (AICPA) which will require the auditor to perform an "examination engagement" and issue an opinion regarding CLEC's compliance with the high capacity EEL eligibility criteria. AICPA standards</p>	<p>(C) The audit shall be conducted by an independent auditor, and the auditor must perform its evaluation in accordance with the standards established by the American Institute for Certified Public Accountants (AICPA). The auditor will perform an "examination engagement" and issue an opinion regarding CLEC's compliance with the qualifying service eligibility criteria. The independent auditor's report will conclude whether CLEC has complied in all material respects with the applicable service eligibility criteria. Consistent with standard auditing practices, such audits require compliance testing designed by the independent auditor, which typically include an examination of a sample selected in accordance with the independent auditor's judgment.</p>
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				and other requirements related to determining the independence of an auditor will govern the audit of requesting carrier compliance. The concept of materiality should govern this audit; the independent auditor's report should conclude whether or the extent to which CLEC complied in all material respects with the applicable service eligibility criteria. Consistent with standard auditing practices, such audits should require compliance testing designed by the independent auditor, which typically includes an examination of a sample selected in accordance with the independent auditor's judgment.	
52	2-34	5.2.8	<p><i>Under what circumstances should CLEC be required to reimburse BellSouth for the cost of the independent auditor?</i></p> <p><i>[Issue restated by agreement of the Parties. 3/8/04]</i></p>	As expressly set forth in the FCC's Triennial Review Order, in the event the auditor's report concludes that CLEC did not comply in all material respects with the service eligibility criteria, CLEC shall reimburse BellSouth for the cost of the independent auditor.	As expressly set forth in the FCC's Triennial Review Order, in the event the auditor's report concludes that CLEC failed to comply in all material respects with the service eligibility criteria (meaning that CLEC must have complied with each and every one of the service eligibility criteria and actually be entitled to the EEL), CLEC shall reimburse BellSouth for the cost of the independent auditor.
53	2-35	6.1.1	<i>This issue has been resolved.</i>		
54	2-36	6.1.1.1	<i>This issue has been resolved.</i>		

55	2-37	6.4.2	<i>What terms should govern CLEC access to test and splice Dark Fiber Transport?</i>	CLEC should be able to splice and test Dark Fiber Transport obtained from BellSouth at any technically feasible point, using CLEC or CLEC-designated personnel. BellSouth must provide appropriate interfaces to allow splicing and testing of Dark Fiber.	BellSouth shall provide appropriate interfaces to allow testing of Dark Fiber. The FCC in its TRO has defined splicing of cable as a routine network modification that is required to be performed by BellSouth, not the CLEC. Subsequent to CLEC acceptance of Dark Fiber, BellSouth should allow the CLEC access to the Dark Fiber at its end points for testing. If a Dark Fiber trouble occurs thereafter, the CLEC should report the trouble to BellSouth and BellSouth will isolate and correct the trouble.
56	2-38	7.2, 7.3	<i>Should BellSouth's obligation to provide signaling link transport and SS7 interconnection at TELRIC-based rates be limited to circumstances in which BellSouth is required to provide and is providing to CLEC unbundled access to Local Circuit Switching?</i>	NO, BellSouth's obligation to provide signaling link transport and SS7 interconnection at TELRIC-based rates should not be limited to circumstances in which BellSouth is required to provide and is providing to CLEC unbundled access to Local Circuit Switching.	Yes. The FCC in its TRO clearly stated that this should be the case in that "competitive LECs are no longer impaired without access to the incumbent LECs' signaling network as a UNE."
57	2-39	7.4	<i>BellSouth Issue Statement:</i> <i>(A) Are the Parties legally obligated to perform CNAM queries and pass</i>	YES, the Parties should be obligated to perform CNAM queries and pass such information on all calls exchanged between them, regardless of whether that would require BellSouth to query a third party	This issue (including all subparts) is not appropriate for arbitration in this proceeding because it involves a request by the CLECs that is not encompassed within BellSouth's obligations pursuant

			<p><i>such information on all calls exchanged between them, including cases that would require the party providing the information to query a third party database provider?</i></p> <p><i>(B) If so, which party should bear the cost?</i></p> <p>CLEC Issue Statement: <i>Should the Parties be obligated to perform CNAM queries and pass such information on all calls exchanged between them, regardless of whether that would require BellSouth to query a third party database provider?</i></p>	<p>database provider.</p>	<p>to Section 251 of the Act.</p> <p>(A) BellSouth is only legally obligated to provide access to its CNAM database as required by the FCC. There is no legal obligation on either Party's part to query other such databases.</p> <p>(B) If BellSouth elects to perform this function for the CLECs, it should be pursuant to separately negotiated rates, terms and conditions and is not appropriately raised as an issue in a Section 251 arbitration.</p>
58	2-40	9.3.5	<p><i>Should LIDB charges be subject to application of jurisdictional factors?</i></p>	<p>No, LIDB charges should not be subject to application of jurisdictional factors.</p>	<p>Yes. Access to LIDB "supports carrier provision of such services as Originating Line Number Screening, Calling Card Validation, Billing Number Screening, Calling Card Fraud and Public Telephone Check. These services are provided in conjunction with local exchange, toll and other telecommunications services." (Footnote 1692 TRO). Only through</p>

					jurisdictional factors would the proper rates be applied to the various call volumes.
59	2-41	14.1	<i>What terms should govern BellSouth's obligation to provide access to OSS?</i>	BellSouth must provide CLEC with nondiscriminatory access to operations support systems on an unbundled basis, in accordance with 47 CFR 51.319(g) and as set forth in Attachment 6. Operations support system ("OSS") functions consist of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by BellSouth's databases and information. BellSouth, as part of its duty to provide access to the pre-ordering function, must provide CLEC with nondiscriminatory access to the same detailed information about the loop that is available to BellSouth.	BellSouth must provide CLEC with nondiscriminatory access to operations support systems on an unbundled basis, in accordance with 47 CFR 51.319(g) as such obligations have been negotiated by the parties and memorialized in Attachment 6 and elsewhere in the agreement. Operations support systems ("OSS") functions consist of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by BellSouth's database and information. BellSouth, as part of its duty to provide access to the pre-ordering function, must provide CLEC with non-discriminatory access to the same detailed information about the loop that is available to BellSouth.
INTERCONNECTION (ATTACHMENT 3)					
60	3-1	3.3.4 (KMC, NSC, NVX) 3.3.3 XSP)	<p><i>BellSouth Issue Statement:</i> <i>How should the CLEC be permitted to connect to BellSouth's switch?</i></p> <p><i>CLEC Issue Statement:</i> <i>Should CLEC be permitted to connect to BellSouth's switch via a Cross Connect or any other technically</i></p>	YES, in the event that a Party's Point of Presence is located within any serving wire center (<i>i.e.</i> , switch location), such Party may interconnect to the other Party's switch via a Cross Connect or any other technically feasible means of interconnection.	Pursuant to the language that the Parties have agreed to in Section 3.2 of Attachment 3, BellSouth will permit the CLEC to interconnect to BellSouth's network at any technically feasible point as defined by applicable FCC and Commission rules and orders. A Cross Connect may not always be technically feasible, such as in the instance that the CLEC's switch and the BellSouth switch are located in two different office

			<i>feasible means of interconnection?</i>		separated by many miles.
61	3-2	9.6 (KMC), 9.6 (NSC), 9.6 (NVX, XSP)	<p><i>BellSouth Issue Statement [Issue 61(A) only]:</i></p> <p><i>(A) What is the definition of a global outage?</i></p> <p><i>(B) Should BellSouth be required to provide upon request, for any trunk group outage that has occurred 3 or more times in a 60 day period, a written root cause analysis report?</i></p> <p><i>(C)(1) What target interval should apply for the delivery of such reports?</i></p> <p><i>(C) (2) What target interval should apply for reports related to global outages?</i></p> <p><i>[The CLECs agree to the restated issues 61(B), (C)(1) and (C)(2) only]</i></p>	<p>(B) YES, upon request, BellSouth should provide a written root cause analysis report for all global outages, and for any trunk group outage that has occurred 3 or more times in a 60 day period.</p> <p>(C) BellSouth should use best efforts to provide global outage and trunk group outage root cause analysis reports within five (5) business days of request.</p>	<p>(A) BellSouth's definition of global outage is an outage consisting of an entire trunk group.</p> <p>(B) BellSouth should provide a written root cause analysis for global outages, but not for other outages.</p> <p>(C)(1) No reports should be required for outages other than global outages.</p> <p>(C)(2) The target interval for root cause analysis on global outages should be 10-30 days.</p>

62	3-3	10.9.5 (KMC), 10.7.4 (NSC), 10.7.4 (NVX), 10.12.4 (XSP)	<p><i>What provisions should apply regarding failure to provide accurate and detailed usage data necessary for the billing and collection of access revenues?</i></p> <p>[Issue restated by agreement of the parties, 3/8/04]</p>	In the event that either Party fails to provide accurate switched access detailed usage data to the other Party <i>within 90 days</i> after the recording date and the receiving Party is unable to bill and/or collect access revenues due to the sending Party's failure to provide such data within said time period, then the Party failing to send the specified data should be liable to the other Party in an amount equal to the unbillable or uncollectible revenues	In the event that either Party was provided the accurate switched access detailed usage data in a manner that allowed that Party to generate and provide such data to the other Party in a reasonable timeframe and the other Party is unable to bill and/or collect access revenues due to the sending Party's failure to provide such data within said time period, then the sending Party shall be liable to the other Party in an amount equal to the unbillable or uncollectible revenues. Each company will provide complete documentation to the other to substantiate any claim of such unbillable or uncollectible revenues.
63	3-4	10.10.6 (KMC), 10.8.6 (NSC), 10.8.6 (NVX), 10.13.5 (XSP)	<p><i>BellSouth Issue Statement:</i> Under what terms should CLEC be obligated to reimburse BellSouth for amounts BellSouth pays to third party carriers to terminate CLEC originated traffic?</p> <p><i>CLEC Issue Statement:</i> Under what terms should CLEC be obligated to reimburse BellSouth for amounts BellSouth pays to</p>	<p>In the event that a terminating third party carrier imposes on BellSouth any charges or costs for the delivery of Transit Traffic originated by CLEC, CLEC should reimburse BellSouth for all charges paid by BellSouth, which BellSouth is contractually obligated to pay.</p> <p>BellSouth should diligently review, dispute and pay such third party invoices (or equivalent) in a manner that is at parity with its own practices for reviewing, disputing and paying such invoices (or equivalent) when no similar reimbursement provision applies.</p>	In the event that a terminating third party carrier imposes on BellSouth any charges or costs for the delivery of Transit Traffic originated by CLEC, CLEC should reimburse BellSouth for all charges paid by BellSouth.

			<i>third party carriers that terminate BellSouth transited/CLEC originated traffic?</i>		
64	3-5	10.7.4.2 (KMC), 10.5.5.2 (NSC), 10.5.6.2 (NVX)	<p><i>While a dispute over jurisdictional factors is pending, what factors should apply in the interim?</i></p> <p><i>[Issue restated by agreement of the parties 3/8/04]</i></p>	<p>While such a dispute over jurisdiction factors is pending, factors reported by the originating Party should remain in place, unless the Parties mutually agree otherwise.</p> <p>[This position statement was changed at the request of the CLECs]</p>	<p>No, in the event that negotiations and audits fail to resolve disputes between the Parties regarding the appropriate factor, either Party may seek Dispute Resolution as set forth in the General Terms and Conditions. While such a dispute is pending, factors calculated by the terminating Party should be utilized, unless the Parties mutually agree otherwise.</p>
65	3-6	10.10. 1 (KMC), 10.8.1 (NSC)	<p><i>Should BellSouth be allowed to charge the CLEC a Tandem Intermediary Charge for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic?</i></p> <p><i>[Issue restated by agreement of the Parties 3/8/04.]</i></p>	<p>NO, BellSouth should not be permitted to impose upon CLEC a Tandem Intermediary Charge (“TIC”) for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic. The TIC is a non-TELRIC based additive charge which exploits BellSouth’s market power and is discriminatory.</p>	<p>Yes, BellSouth is not obligated to provide the transit function and the CLEC has the right pursuant to the Act to request direct interconnection to other carriers. Additionally, BellSouth incurs costs beyond those for which the Commission ordered rates were designed to address, such as the costs of sending records to the CLECs identifying the originating carrier. BellSouth does not charge the CLEC for these records and does not recover those costs in any other form. Moreover, this issue is not appropriate for arbitration in this proceeding because it involves a</p>

					request by the CLECs that is not encompassed within BellSouth's obligations pursuant to Section 251 of the Act.
66	3-7	10.1 (KMC),10.1 (XSP)	<p><i>BellSouth Issue Statement:</i></p> <p><i>(A) Does the tandem interconnection rate include common transport?</i></p> <p><i>(B) What information must CLEC provide to establish entitlement to symmetrical reciprocal compensation for the transport and termination of Local Traffic at the tandem interconnection rate?</i></p> <p><i>CLEC Issue Statement:</i> <i>Should CLEC be entitled to symmetrical reciprocal compensation for the transport and termination of Local Traffic at the tandem interconnection rate?</i></p>	YES, CLEC should be entitled to bill, and BellSouth should be obligated to pay, reciprocal compensation for the transport and termination of Local Traffic to CLEC at a symmetrical tandem interconnection rate, inclusive of end office switching, tandem switching, and transport.	<p>(A) No. Common transport is a separate rate element and is not included in the tandem interconnection rate element.</p> <p>(B) CLEC should be entitled to bill, and BellSouth should be obligated to pay, reciprocal compensation for the transport and termination of Local Traffic to CLEC at a symmetrical tandem interconnection rate, inclusive of end office switching and tandem switching, upon the CLEC's verification that it meets the requirement of geographic comparability pursuant to the Act.</p>

67	3-8	10.2, 10.2.1 (KMC), 10.2, 10.3 (XSP)	<i>Should compensation for the transport and termination of ISP-bound Traffic be subject to a cap?</i>	NO, compensation caps set in the FCC's remanded ISP Order on Remand do not extend beyond 2003.	Yes, pursuant to the FCC's ISP Order on Remand, the compensation regime including rate and growth caps shall remain in place until the FCC issues a subsequent order.
68	3-9	2.1.12 (XSP)	<i>How should Local Traffic be defined?</i>	Local Traffic should be defined as any telephone call that originates in one exchange and is terminated in either the same exchange, or other mandatory local calling area associated with the originating exchange (e.g., mandatory Extended Area Service) as defined and specified in Section A3 of BellSouth's GSST. Designation of Local Traffic should not be dependent on the type of switching technology used to switch and terminate such Local Traffic, including use of frame switching. Local Traffic includes any cross boundary, intrastate, interLATA or interstate, interLATA calls established as a local call by the ruling regulatory body.	Local Traffic should be defined as any telephone call that originates in one exchange and terminates in either the same exchange, or other local calling area associated with the originating exchange as defined and specified in Section A3 of BellSouth's General Subscriber Service Tariff. Local Traffic includes any cross boundary, intrastate, interLATA or interstate, interLATA calls established as a local call by the ruling regulatory body.
69	3-10	3.2 (XSP), Ex. A (XSP)	<p><i>(A) Should BellSouth be required to provide CLEC with OCn level interconnection at TELRIC-compliant rates?</i></p> <p><i>(B) What should those rates be?</i></p>	<p>(A) YES, OCn level interconnection is technically feasible and must be made available at TELRIC-compliant rates.</p> <p>(B) TELRIC compliant rates for OCn interconnection trunks and facilities should be set by the Commission.</p>	<p>(A) No. It is not technically feasible to interconnect at the OCn level.</p> <p>(B) OCn level interconnection is not technically feasible and should not be required for this reason. Therefore, no rate should be set.</p>

70	3-11	3.3.1, 3.3.2, 3.4.5, 10.10.2 (XSP)	<p><i>BellSouth Issue Statement:</i> <i>Should facilities used for toll traffic be offered at TELRIC rates?</i></p> <p><i>CLEC Issue Statement:</i> <i>Should cost-based interconnection (i.e., TELRIC), be limited to the percentage of facilities used for “local” traffic?</i></p>	NO, cost-based interconnection should not be limited to the percentage of facilities used for “local” traffic (“PLF”). CLEC is entitled to cost based interconnection for telephone exchange and exchange access traffic.	Yes, the CLEC is not entitled to cost-based rates for facilities utilized for interexchange traffic.
71	3-12	4.5 (XSP)	<p><i>What rate should apply for interconnection trunks and facilities in the event that a rate is not set forth in Exhibit A?</i></p> <p><i>[Issue restated by agreement of the parties]</i></p>	To the extent a rate associated with interconnection trunks and facilities is not set forth in Exhibit A of Attachment 3, and no Commission-approved rate has been set, the rate should be negotiated by the Parties.	All applicable cost-based rates ordered by the Commission are set forth in Exhibit A of Attachment 3. If either Party orders an element for which there is not a cost based rate, then such element will be as set forth in the applicable party’s FCC or Commission filed and effective tariff. If either Party believes that a cost-based rate should be established for any element, then such Party may submit a request via a BFR for cost-based rates.
72	3-13	4.6 (XSP)	<i>Should the costs of two-way interconnection trunks and facilities used for both parties’ traffic be split proportionally based on the percentage of traffic originated by each Party or in half?</i>	For two-way trunk groups that carry only both Parties’ non-transit and non-interLATA Switched Access Traffic, each Party should pay its proportionate share of the recurring charges for trunks and associated facilities and nonrecurring charges for additional trunks and associated facilities based on the percentage of the	No, this assumes that all minutes exchanged by the parties traverse two-way trunks and facilities when either Party may establish one-ways, thus inappropriately distorting the proportional use. This is a technically infeasible request. The Parties should only use two-ways where the traffic is

			<i>[Issue restated by agreement of the Parties]</i>	total traffic originated by that Party. The Parties should determine the applicable percentages twice per year based on the previous six months minutes of use billed by each Party. Each Party should pay its proportionate share of initial facilities based on the joint forecasts for circuits required by each Party.	balanced in such a way that a two-way facility is appropriate. In such an instance, the Parties should split the cost of such two-ways in half.
73	3-14	10.10.4, 10.10.5, 10.10.6, 10.10.7 (XSP)	<p>BellSouth Issue Statement: Under what conditions should CLEC be permitted to bill BellSouth based on actual traffic measurements, in lieu of BellSouth-reported jurisdictional factors?</p> <p>CLEC Issue Statement: Should CLEC be permitted to bill BellSouth based on actual traffic measurements, in lieu of BellSouth-reported jurisdictional factors?</p>	YES, where CLEC has message recording technology that identifies the jurisdiction of traffic terminated as defined in the Agreement, CLEC should have the option of using that information to bill BellSouth based upon actual measurements and jurisdictionalization, in lieu of factors reported by BellSouth.	CLEC may have the option to bill BellSouth based on its own actual traffic measurements for services that the CLEC has valid authorization to bill BellSouth in the form of tariffs, interconnection agreements or other contractual authority. Prior to the CLEC implementing billing based on its own traffic measurements, however, the CLEC and BellSouth will mutually agree that the traffic measurement system employed by the CLEC, or at the direction of the CLEC, accurately measures traffic and assigns the correct jurisdiction in accordance with the Agreement and applicable underlying FCC rules. BellSouth shall have, at its option, the right to audit the CLEC measurement system periodically.
COLLOCATION (ATTACHMENT 4)					
74	4-1	3.9	(A) What definition of “Cross Connect” should be included in the Agreement?	The following definition of “Cross Connect” should be included in the Agreement: “A cross-connection (Cross Connect) is a cabling scheme between cabling runs subsystems, and equipment	(A) The following definition of “Cross Connect” should be included in the Agreement: “A cross connect is a jumper on a frame (Main Distribution or Intermediate Distribution) or panel

			<p><i>(B) When no collocation arrangement is involved, does BellSouth recover the cost of a cross connect through the price of the service ordered by CLEC when provisioning such cross connect?</i></p> <p><i>[Issue restated by agreement of Parties 3/8/04.]</i></p>	<p>using patch cords or jumper wires that attach to connection hardware on each end, as defined and described by the FCC in its applicable rules and orders.”</p> <p>[This position statement was modified at the request of the CLECs]</p>	<p>(DSX or LGX) that is used to connect equipment and/or facility terminations together.”</p> <p>(B) BellSouth does not agree with the additional language that CLEC proposes because the cross connect required for the provision of a particular service, not associated with a collocation arrangement, may not be included in the cost of the service, but may have to be ordered in addition to the service requested.</p>
75	4-2	5.21.1, 5.21.2	<p><i>BellSouth Issue Statement:</i> <i>What restrictions should apply to the CLEC’s use of collocation space or collocated equipment/facilities that impact others?</i></p> <p><i>CLEC Issue Statement:</i> <i>With respect to interference and impairment issues raised outside of the scope of the FCC Rule 51.233 (which relates to the deployment of Advanced Services equipment) what provisions should be included in the Agreement?</i></p>	<p>Provisions should be included to cover the installation and operation of any equipment or services that (1) significantly degrades (“significantly degrades” is as in the FCC rule applicable to Advanced Services); (2) endangers or damages the equipment or facilities of any other telecommunications carrier collocated in the Premises; or (3) knowingly and unlawfully compromises the privacy of communications routed through the Premises; and (4) creates an unreasonable risk of injury or death to any individual or to the public.</p> <p>The Agreement also should provide that if BellSouth reasonably determines that any equipment or facilities of CLEC violates the provisions of Section 5.21, BellSouth should provide written notice to CLEC requesting that CLEC cure the violation</p>	<p>Provisions should be included in this Agreement to cover the installation and operation of any equipment, facilities or services that (1) significantly degrades (defined as an action that noticeably impairs a service from a user’s perspective), interferes with or impairs service provided by BellSouth or by any other entity or any person’s use of its telecommunications services; (2) endangers or damages the equipment, facilities or any other property of BellSouth or of any other entity or person; (3) compromises the privacy of any communications routed through the Premises; or (4) creates an unreasonable risk of injury or death to any individual or to the public.</p> <p>The Agreement should also provide that</p>

				<p>within forty-eight (48) hours of actual receipt of written notice or, at a minimum, to commence curative measures within twenty-four (24) hours and to exercise reasonable diligence to complete such measures as soon as possible thereafter.</p> <p>The Agreement also should state that, with the exception of instances which pose an immediate and substantial threat of physical damage to property or injury or death to any person, disputes regarding the source of the risk, impairment, interference, or degradation should be resolved pursuant to the Dispute Resolution provisions set forth in the General Terms and Conditions.</p>	<p>if BellSouth reasonably determines that any equipment or facilities of the CLEC violates the provisions of Section 5.21.1, BellSouth should provide written notice to the CLEC directing that the CLEC cure the violation within forty-eight (48) hours of CLEC's actual receipt of written notice or, if such cure is not feasible, at a minimum, to commence curative measures within twenty-four (24) hours and to exercise reasonable diligence to complete such measures as soon as possible thereafter.</p> <p>The Agreement should provide that either party may submit any disputes regarding the source of the risk, impairment, interference, or degradation to the Commission, except in the case of the deployment of an advanced service which significantly degrades the performance of other advanced services or traditional voice band services, if the CLEC fails to commence curative action within twenty-four (24) hours and exercise reasonable diligence to complete such action as soon as possible or if the violation is of a character that poses an immediate and substantial threat of damage to property or injury or death to any person, or any other significant degradation, interference or impairment of BellSouth's or another</p>
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					entity's service. In regard to the above exception, BellSouth should be permitted to take such action as it deems necessary to eliminate any immediate or substantial threat, including, without limitation, the interruption of electrical power to the CLEC's equipment which BellSouth has determined beyond a reasonable doubt is the cause of such threat.
76	4-3	8.1	<p><i>BellSouth Issue Statement:</i> How should grandfathered rates apply?</p> <p><i>CLEC Issue Statement:</i> Where grandfathering is appropriate, which rates should apply?</p>	When rates have been "grandfathered," the rates that will apply are those rates that were in effect prior to the Effective Date of the Agreement, unless application of such rates would be inconsistent with the underlying purpose for grandfathering.	When rates have been "grandfathered," the rates that would apply are those rates that were in effect prior to the Effective Date of the Agreement or as otherwise specified within the Agreement. There should be no other exceptions allowed for the application of "grandfathered" rates.
77	4-4	8.4	When should BellSouth commence billing of recurring charges for power?	Billing for recurring charges for power provided by BellSouth should commence on the date upon which the primary and redundant connections from CLEC's equipment in the Collocation Space to the BellSouth power board or BDFB are installed.	If the CLEC has met the applicable fifteen (15) calendar day walkthrough interval specified in Section 4.3 of the Agreement, billing for recurring power charges should commence upon the Space Acceptance Date. If the CLEC fails to complete an acceptance walkthrough within the applicable fifteen (15) calendar day interval, billing for recurring power charges should commence on the Space Ready Date. If the CLEC occupies the space prior to the Space Ready Date, then the date the

					CLEC occupies the space should be deemed the new Space Acceptance Date and billing for recurring power charges should begin on that date.
78	4-5	8.6	<p><i>BellSouth Issue Statement:</i> Should CLEC be required to pay additional space preparation fees and charges for costs related to functions that have not already been recovered through previous ICB or NCR charges?</p> <p><i>CLEC Issue Statement:</i> Should CLEC be required to pay space preparation fees and charges with respect to collocations when it already has paid space preparation charges through ICB or NRC pricing?</p>	NO, space preparation fees should not apply when CLEC already has paid space preparation charges through previously billed ICB or non-recurring space preparation charges.	Yes. A CLEC should be required to pay that portion of the monthly recurring charges associated with ongoing maintenance, replacement and upgrades to the central office, which will directly benefit the CLEC in the future. The space preparation fees that were billed to and paid by the CLEC under an ICB or NCR pricing structure at the time the CLEC occupied the assigned collocation space should not be assessed to the CLEC. As stated above, only that portion of the monthly recurring charges associated with ongoing maintenance, replacement and upgrade activities in the central office should be assessed to the CLEC on a monthly recurring basis.
79	4-6	8.11, 8.11.1, 8.12.2	What rates should apply for BellSouth-supplied DC power?	Applicable rates should vary depending on whether CLEC elects to be billed on a “fused amp” basis, by electing to remain (or install new collocations or augments) under the traditional collocation power billing method, or on a “used amp” basis, by electing to convert collocations to (or install	For all states except Tennessee, recurring charges for -48V DC power should be assessed on a “per fused amp” basis, based upon the CLEC’s BellSouth Certified Supplier engineered and installed power feed fused ampere capacity. In Tennessee, the CLEC

				<p>new collocations or augments under) the power usage metering option set forth in Section 9 of Attachment 4.</p> <p>Under either billing method, there will be rates applicable to grandfathered collocations for which power plant infrastructure costs have been prepaid under an ICB pricing or non-recurring charge arrangement, and there will be rates applicable where such grandfathering does not apply and power plant infrastructure is instead recovered via recurring charges, as currently set by the Commission.</p> <p>Under the fused amp billing option, CLEC will be billed at the Commission's most recently approved fused amp recurring rate for DC power. However, if certain arrangements are grandfathered as a result of CLEC having paid installation costs under an ICB or non-recurring rate schedule for the collocation arrangement power installation, CLEC should only be billed the recurring rate for the DC power in effect prior to the Effective Date of this Agreement, or, if rates that excluded the infrastructure component had not been incorporated into the Parties' most recent Agreement, the most recent Commission approved rate that does not include an infrastructure component should apply.</p>	<p>should be permitted to choose to be billed on a "per fused amp" basis, by electing to remain (or install new collocations or augments) under the traditional collocation power billing method that BellSouth uses for all of the other states (including Tennessee), or on a "per used amp" basis, by electing to convert collocations to (or install new collocations or augments under) the Tennessee power usage metering option set forth in the Agreement. Under either the "per fused amp" billing methodology, which applies for all states, or the "per used amp" billing option, which applies to Tennessee only, there will be rates applicable to grandfathered collocations for which power plant infrastructure costs have been prepaid under an ICB pricing or non-recurring charge arrangement and there will be rates applicable where such grandfathering does not apply and power plant infrastructure is instead recovered via recurring charges.</p> <p>Under the fused amp billing option, which is applicable to all states, the CLEC should be billed at the Commission's most recently approved fused amp recurring rate for DC power. However, if the Parties either previously agreed to "grandfather" such</p>
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				<p>Under the power usage metering option, recurring charges for DC power are subdivided into a power infrastructure component and an AC usage component (based on DC amps consumed). However, if certain arrangements are grandfathered as a result of CLEC having paid installation costs under an ICB or non-recurring rate schedule for the collocation arrangement power installation, CLEC should only be billed a recurring rate for the AC usage based on the most recent Commission approved rate exclusive of an infrastructure component (as set by the Commission).</p>	<p>arrangements or such arrangements are grandfathered as a result of the CLEC having provided documentation to BellSouth demonstrating that the CLEC paid installation costs under an ICB or non-recurring rate structure for the collocation arrangement power installation, then the CLEC should only be billed the monthly recurring rate for the DC power in effect prior to the Effective Date of the Agreement, or, if such grandfathered rates had not been incorporated in to the Parties' most recent Agreement, the rates contained in Exhibit B of the Attachment, which reflect only that portion of the monthly recurring charges associated with the AC usage and ongoing maintenance, replacement and upgrades to the central office power infrastructure, which will directly benefit the CLEC in the future.</p> <p>In Tennessee, under the power usage metering option, recurring charges for DC power will be subdivided into a power infrastructure component and an AC usage component (based on DC amps consumed). However, if the Parties either previously agreed to "grandfather" such arrangements or such arrangements are grandfathered as a result of the CLEC having provided documentation to BellSouth</p>
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					demonstrating that the CLEC paid installation costs under an ICB or non-recurring rate structure for the collocation arrangement power installation, then the CLEC should only be billed the monthly recurring rate for the AC usage based on the most recent Commission approved rate and the DC power infrastructure component that excludes those costs previously paid through the ICB or NRC pricing structure. Thus, the CLEC should be required to pay that portion of the DC power infrastructure component associated with ongoing maintenance, replacement and upgrades to the central office, which will directly benefit the CLEC in the future.
80	4-7	9.1.1	<p><i>BellSouth Issue Statement:</i> <i>(A) How should recurring and non-recurring charges be applied?</i></p> <p><i>(B) What should the charges be?</i></p> <p><i>CLEC Issue Statement:</i> <i>Under the fused amp billing option, how will recurring and non-recurring charges be applied and what should</i></p>	<p>Under the fused amp billing option, monthly recurring charges for –48V DC power should be assessed per fused amp per month in a manner consistent with Commission orders and as set forth in Section 8 of Attachment 4 (see Issue 4-6 above).</p> <p>Non-recurring charges for –48V DC power distribution, should be as prescribed by the Commission.</p>	<p>(A) Under the regional fused amp billing option, which applies to all states, monthly recurring charges for –48V DC power should be assessed per fused amp per month based upon the CLEC’s BellSouth Certified Supplier engineered and installed power feed fused amperage capacity in a manner consistent with Commission orders and as set forth in Section 8 of Attachment 4 (See Issue 4-6 above).</p> <p>(B) Non-recurring charges for -48V DC power distribution should be based on the costs associated with collocation</p>

			<i>those charges be?</i>		power plant investment and the associated infrastructure.
81	4-8	9.1.2, 9.1.3	<p><i>BellSouth Issue Statement:</i> <i>(A) Should CLEC be permitted to choose between a fused amp billing option and a power usage metering option?</i></p> <p><i>(B) If power usage metering is allowed, how will recurring and non-recurring charges be applied and what should those charges be?</i></p> <p><i>CLEC Issue Statement:</i> <i>(A) Should CLEC be permitted to choose between a fused amp billing option and a power usage metering option in states other than and in addition to Tennessee (where the choice already is available)?</i></p> <p><i>(B) Under the power usage metering option,</i></p>	<p>(A) YES, CLEC should be permitted to choose between a fused amp billing option and a power usage metering option in states other than and in addition to Tennessee.</p> <p>(B) If CLEC chooses the power usage metering option, monthly recurring charges for -48V DC power will be assessed based on a consumption component and, if applicable, an infrastructure component, as set forth in Section 8 of Attachment 4 (see Issue 4-6 above). The Commission should ensure that its most recently approved recurring rates are apportioned appropriately into the consumption and infrastructure components.</p> <p>Non-recurring charges for -48V DC power distribution should be as prescribed by the Commission.</p>	<p>(A) No. CLECs should not be permitted to choose between a fused amp billing option and a power usage metering option in states other than Tennessee, where BellSouth was ordered to do so. The only other states that have ordered a power usage metering option are Florida and Georgia, but the Commissions in these states have not determined the appropriate power metering rate structure and the associated rates that would be assessed to CLECs that elect this option. Therefore, BellSouth cannot offer a power usage metering option in Florida and Georgia until these issues have been resolved. In regard to the other states, BellSouth should be permitted to continue assessing monthly recurring DC power charges on a “per fused amp” basis.</p> <p>(B) In Tennessee, if the CLEC selects the power usage metering option, the monthly recurring charges for -48V DC power should be assessed based on the AC usage component of the DC power consumed by the CLEC and an infrastructure component, associated with the DC power plant and the</p>

			<p><i>how will recurring and non-recurring charges be applied and what should those charges be?</i></p>		<p>associated equipment required to convert AC power to DC power, as set forth in Exhibit B of Attachment 4. BellSouth has taken the Commission's current approved monthly recurring DC power rate (which is a fused amp rate) and apportioned it appropriately into these two components based upon the cost study inputs used initially to develop the ordered rate.</p> <p>Recurring charges for the AC usage component, the infrastructure component associated with the DC power plant and the associated equipment required to convert AC power to DC power, and the Meter Reading expense will be assessed pursuant to Section 8.4 of Attachment 4. (See BST's Position as stated under Issue 4-4 above)</p> <p>The non-recurring charge associated with the submission of a Subsequent Application, to convert existing collocation arrangements to the power metering option in Tennessee or to remove or install telecommunications equipment in the CLEC's space, will be billed on the date that BellSouth provides an Application Response to the Subsequent Application. If the CLEC requests that an unscheduled (prior to</p>
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					<p>the next scheduled quarterly power reading date) power usage reading be taken or if the CLEC fails to provide access to its caged collocation space or fails to provide BellSouth and/or a BellSouth Certified Supplier with sufficient notification of the necessity to cancel and/or reschedule the initial agreed-upon appointment, then the CLEC will be responsible for paying each “Additional Meter Reading Trip Charge,” which will be reflected on the CLEC’s next month’s billing statement. In addition, there will be a non-recurring fee associated with the modifications that BellSouth must make to its billing systems in order to accept the power usage measurement data. This fee will be reflected on the CLEC’s next billing statement immediately following the completion of the required modifications.</p>
82	4-9	9.3	<p><i>For BellSouth-supplied AC power, should CLEC be entitled to choose between a fused amp billing option and a power usage metering option?</i></p>	<p>YES, where CLEC elects to install its own DC Power Plant, and BellSouth provides Alternating Current (AC) power to feed CLEC’s DC Power Plant, CLEC should have the option of choosing between fused amp billing and power usage metering options.</p>	<p>No. If the CLEC elects to install its own DC Power Plant, BellSouth is willing to provide Alternating Current (AC) power to feed the CLEC’s DC Power Plant. Charges for AC power should be assessed per breaker ampere based on the appropriate allocation of AC power delivered to the central office fuse panel by the commercial electric provider. BellSouth anticipates that if a CLEC requests AC power from BellSouth to</p>

					<p>feed its own Power Plant, BellSouth would have to install and dedicate a circuit breaker to the CLEC at its fuse panel where the commercial electric power enters the central office. It would, therefore, be appropriate for BellSouth to pro-rate the AC power to each of the circuit breakers in BellSouth's fuse panel based on the fused amperage that each circuit breaker is designed to carry in relation to the total amount of fused amperage for all of the circuit breakers contained in BellSouth's fuse panel, which serve the central office.</p>
83	4-10	13.6	<p>BellSouth Issue Statement: <i>Under what circumstances should BellSouth be entitled to request that a CLEC employee be removed from BellSouth's premises in the absence of a formal investigation?</i></p> <p>CLEC Issue Statement: (A) <i>Should BellSouth have the right to request the removal from BellSouth's Premises of a CLEC employee where the CLEC employee has not been found to have interfered</i></p>	<p>(A) NO, only in cases where CLEC employee is found interfering with the property or personnel of BellSouth or another telecommunications carrier in a significant and material way should BellSouth be entitled to request prompt removal and suspension of access from BellSouth's Premises for any employee of CLEC to whom BellSouth does not wish to grant access pursuant to an investigation to be conducted by BellSouth.</p> <p>(B) YES, in instances where interference caused by CLEC employee has not been found to have interfered with the property or personnel of BellSouth or another telecommunications carrier in a significant and material way, the Parties should be</p>	<p>At BellSouth's request, the CLEC should be required to promptly remove from BellSouth's premises any employee of the CLEC that BellSouth does not wish to grant access to its premises pursuant to any investigation conducted by BellSouth or prior to the initiation of an investigation if an employee of the CLEC is found interfering with the property or personnel of BellSouth or another collocated telecommunications carrier. Such investigation shall be commenced and completed by BellSouth as promptly and expeditiously as possible.</p>

			<p><i>with the property or personnel of BellSouth or another telecommunications carrier in a significant and material way?</i></p> <p><i>(B) In instances where interference caused by CLEC employee has not been found to have interfered with the property or personnel of BellSouth or another telecommunications carrier in a significant and material way, should the Parties be required to cooperate to ensure that appropriate remedial measures are taken that are less likely to have a significant impact on CLEC's daily operations?</i></p>	<p>required to cooperate and communicate, to the extent circumstances permit, to ensure that the Parties may take appropriate remedial measures and so that CLEC personnel are not denied access for activity that does not have a significant and material impact and that would be more suitably addressed through disciplinary measures less likely to have a significant impact on CLEC's daily operations.</p>	
ORDERING (ATTACHMENT 6)					
84	6-1	2.5.1	<p><i>Should payment history be included in the CSR?</i></p>	<p>YES, the subscribers' payment history should be included in the CSR to the extent authorized or required by the FCC, Commission or End User.</p>	<p>NO, payment history should be maintained as confidential information and is not necessary in order for a CLEC to provision service to an end user. BellSouth's systems will not permit this information to be shared on an end user</p>

					by end user or CLEC by CLEC basis.
85	6-2	2.5.5	<i>Should CLEC have to provide BellSouth with access to CSRs within firm intervals?</i>	NO, CLEC is not required by law to commit to specific intervals, and does not have any automated system in place to handle CSR requests. Moreover, BellSouth refuses to commit to deliver CSRs within a firm interval. CLEC, however, will commit to use its best efforts to provide CSRs within an average of 5 business days of a valid request, subject to the same exclusions applicable to BST's delivery of CSRs.	YES, BellSouth is required to provide CSRs to CLEC in intervals prescribed by this Commission which, if not met, require BellSouth to remit SEEMs penalties. If CLEC is not held to the same standard, the End User customer is impaired by being unable to receive the same service interval from all local service providers.
86	6-3	2.5.6.2, 2.5.6.3	<p><i>(A) What procedures should apply when one Party alleges, via written notice, that the other Party has engaged in unauthorized access to CSR information?</i></p> <p><i>(B) How should disputes over alleged unauthorized access to CSR information be handled under the Agreement?</i></p>	<p>(A) Either Party, in the event it suspects that the other Party has accessed CSR information without having obtained the proper End User authorization, should send written notice to the other Party specifying the alleged noncompliance. The Party receiving the notice should be obligated to acknowledge receipt of the notice as soon as practicable, and provide appropriate proof of authorization within seven (7) days or provide notice that appropriate corrective measures have been taken or will be taken as soon as practicable.</p> <p>(B) If one Party disputes the other Party's assertion of non-compliance, that Party should notify the other Party in writing of the basis for its assertion of compliance. If the receiving Party fails to provide the other Party with notice that appropriate corrective measures have been taken within a</p>	<p>(A) The Party receiving such notice should provide documentation within seven (7) business days to prove authorization.</p> <p>(B) The Party providing notice of such impropriety should provide notice to the offending Party that additional applications for service may be refused, that any pending orders for service may not be completed, and/or that access to ordering systems may be suspended if such use is not corrected or ceased by the fifth (5th) calendar day following the date of the notice. In addition, the alleging Party may, at the same time, provide written notice to the person(s) designated by the other Party to receive notices of noncompliance that the alleging Party may terminate the provision of access to ordering systems to the other Party and may discontinue</p>

				reasonable time or provide the other Party with proof sufficient to persuade the other Party that it erred in asserting the non-compliance, the requesting Party should proceed pursuant to the Dispute Resolution provisions set forth in the General Terms and Conditions and the Parties should cooperatively seek expedited resolution of the dispute. “Self help”, in the form of suspension of access to ordering systems and discontinuance of service, is inappropriate and coercive. Moreover, it effectively denies one Party the ability to avail itself to the Dispute Resolution process otherwise agreed to by the Parties.	the provisioning of existing services if such use is not corrected or ceased by the tenth (10 th) calendar day following the date of the initial notice. If the other Party disagrees with the alleging Party’s allegations of unauthorized use, the other Party shall proceed pursuant to the dispute resolution provisions set forth in the General Terms and Conditions.
87	6-4	2.6	<i>Should BellSouth be allowed to assess manual service order charges on CLEC orders for which BellSouth does not provide an electronic ordering option?</i>	NO, if, at any time, electronic interfaces are not available to make placement of an electronic LSR possible, CLEC must use the manual LSR process for the ordering of UNEs and Combinations. In such cases where CLEC does not willfully choose to use the manual LSR process, CLEC should be assessed the lower electronic LSR OSS rate.	YES, BellSouth is not required to provide electronic ordering capability for every product or service. BellSouth has implemented the Change Control Process for CLEC requests to change BellSouth’s OSS capabilities if CLEC is not satisfied with existing ordering capabilities.
88	6-5	2.6.5	<i>What rate should apply for Service Date Advancement (a/k/a service expedites)?</i>	Rates for Service Date Advancement (a/k/a service expedites) related to UNEs, interconnection or collocation should be set consistent with TELRIC pricing principles.	BellSouth is not required to provide expedited service pursuant to The Act. If BellSouth elects to offer expedite capability as an enhancement to a CLEC, BellSouth’s tariffed rates for service date advancement should apply. Moreover, this issue is not appropriate for arbitration in this proceeding because it involves a request by the

					CLECs that is not encompassed within BellSouth's obligations pursuant to Section 251 of the Act.
89	6-6	2.6.25	<i>Should CLEC be required to deliver a FOC to BellSouth for purposes of porting a number within a firm interval?</i>	NO, CLEC is not required by law to commit to specific intervals, and does not have the necessary automated system in place to meet such requirements. Moreover, BellSouth refuses to commit to deliver FOCs within a firm interval. CLEC, however, subject to the same exclusions that apply to BellSouth's delivery of a FOC, is willing to commit to use best efforts to return a FOC to BellSouth, for purposes of porting a number, within an average of 5 business days, for noncomplex orders, after CLEC's receipt from BellSouth of a valid LSR.	YES, BellSouth is required to provide FOCs to CLEC in intervals prescribed by this Commission, which if not met require BellSouth to remit SEEMs penalties. If CLEC is not held to the same standard, the End User customer is impaired by being unable to receive the same service interval from all Local service providers.
90	6-7	2.6.26	<i>Should CLEC be required to provide Reject Responses to BellSouth within a firm interval?</i>	NO, CLEC is not required by law to commit to specific intervals, and does not have the necessary automated system in place to meet such requirements. Moreover, BellSouth refuses to commit to deliver Reject Responses within a firm interval. CLEC, however, subject to the same exclusions that apply to BellSouth's delivery of Reject Responses, is willing to commit to use best efforts to return Reject Responses to BellSouth, for purposes of porting a number, within an average of 5 business days, for noncomplex orders, after CLEC's receipt from BellSouth of a valid LSR.	YES, BellSouth is required to provide FOC Reject Responses to CLEC in intervals prescribed by this Commission which if not met require BellSouth to remit SEEMs penalties. If CLEC is not held to the same standard, the End User customer is impaired by being unable to receive the same service interval from all Local service providers.

91	6-8	2.7.10.4	<i>Should BellSouth be required to provide performance and maintenance history for circuits with chronic problems?</i>	YES, upon request from CLEC, BellSouth should disclose all available performance and maintenance history regarding the network element, service or facility subject to the chronic trouble ticket.	NO, network performance and maintenance history is BellSouth's proprietary information.
92	6-9	2.9.1	<i>Should charges for substantially similar OSS functions performed by the parties be reciprocal?</i>	YES, the Parties should bill each other OSS rates pursuant to the terms, conditions and rates for OSS as set forth in Exhibit A of Attachment 2 of the Agreement, for substantially similar OSS functions performed by the Parties.	YES, but only for those functions that CLEC performs that are substantially similar to those performed by BellSouth and only if the CLEC performs the same OSS functions pursuant to the terms and conditions under which BellSouth bills CLEC for OSS, including FOC reject turnaround times the same as BellSouth's, due date intervals the same as BellSouth's and CSRs handled under the same terms and conditions under which BellSouth provides the CSRs to CLEC.
93	6-10	3.1.1	<p><i>(A) Can Bellsouth make the porting of an End User to the CLEC contingent on either the CLEC having an operating, billing and/or collection arrangement with any third party carrier, including BellSouth Long Distance or the End User changing its PIC?</i></p> <p><i>(B) If not, should</i></p>	(A) NO, BellSouth is required by law to port a customer once the customer requests to be switched to another local service provider, regardless of any arrangement or agreement (or lack thereof) between CLEC and BellSouth Long Distance or another third party carrier. BellSouth's practice represents an anticompetitive leveraging of its ILEC status in favor of, and in collusion with, its Section 272 affiliate. More specifically, BellSouth may not condition its compliance with these obligations under the Agreement upon CLEC's or its End-Users'	<p>(A) YES. If another carrier restricts the conditions under which that carrier's end user can retain a PIC, CLEC should be required to either comply with that carriers requirements or transfer the end-user with another PIC.</p> <p>(B) NO, liquidated damages provisions are inappropriate.</p>

			<p><i>BellSouth be subject to liquidated damages for imposing such conditions?</i></p>	<p>entry into any billing and/or collection arrangement, operational understanding, relationship or other arrangement with one or more of BellSouth's Affiliates, and/or any third party carrier.</p> <p>(B) YES, liquidated damages are appropriate in this instance because it would be impossible or commercially impracticable to ascertain and fix the actual amount of damages as would be sustained by CLEC as a result of such action by BellSouth. A liquidated damage amount of \$1,000 per occurrence per day is a reasonable approximation of the damages likely to be sustained by CLEC, upon the occurrence and during the continuance of any such breach. Liquidated damages should be in addition to and without prejudice to or limitation upon any other rights or remedies CLEC and/or any of its End Users may have under this Agreement and/or other applicable documents against BellSouth.</p>	
94	6-11	3.1.2, 3.1.2.1	<p><i>(A) Should the mass migration of customer service arrangements resulting from mergers, acquisitions and asset transfers be accomplished by the submission of an electronic LSR or spreadsheet?</i></p>	<p>(A) YES, mass migration of customer service arrangements (e.g., UNEs, Combinations, resale) should be accomplished pursuant to submission of electronic LSR or, if mutually agreed to by the Parties, by submission of a spreadsheet in a mutually agreed-upon format. Until such time as an electronic LSR process is available, a spreadsheet containing all</p>	<p>This issue (including all subparts) is not appropriate for arbitration in this proceeding because it involves a request by the CLECs that is not encompassed within BellSouth's obligations pursuant to Section 251 of the Act.</p> <p>(A) No, each and every Merger, Acquisition and Asset Transfer is</p>

			<p><i>(B) If so, what rates should apply?</i></p> <p><i>(C) What should be the interval for such mass migrations of services?</i></p>	<p>relevant information should be used.</p> <p>(B) An electronic OSS charge should be assessed per service arrangement migrated. In addition, BellSouth should only charge CLEC a TELRIC-based records change charge, as set forth in Exhibit A of Attachment 2, for migrations of customers for which no physical re-termination of circuits must be performed. Similarly, BellSouth should only charge CLEC a TELRIC-based charge, as set forth in Exhibit A of Attachment 2, for migrations of customers for which physical re-termination of circuits is required.</p> <p>(C) Migrations should be completed within ten (10) calendar days of an LSR or spreadsheet submission.</p>	<p>unique and requires project management and planning to ascertain the appropriate manner in which to accomplish the transfer, including how orders should be submitted. The vast array of services that may be the subject of such a transfer, under the agreement and both state and federal tariffs, necessitates that various forms of documentation may be required.</p> <p>(B) The rates by necessity must be negotiated between the Parties based upon the particular services to be transferred and the work involved.</p> <p>(C) No finite interval can be set to cover all potential situations. While shorter intervals can be committed to and met for small, simple projects, larger and more complex projects require much longer intervals and prioritization and cooperation between the Parties.</p>
BILLING (ATTACHMENT 7)					
95	7-1	1.1.3	<p><i>BellSouth Issue Statement: What limitations period should apply to charges under the agreement and should such limitations period apply to all issue related to billing under the agreement?</i></p>	<p>YES, bills for service should not be rendered more than ninety (90) calendar days have passed since the bill date on which those charges ordinarily would have been billed. Billed amounts for services rendered more than one (1) billing period prior to the Bill Date should be invalid unless the billing Party identifies such billing as “back-billing” on a line-item</p>	<p>All charges incurred under the agreement should be subject to the state’s statute of limitations or applicable Commission rules. Back-billing alone should not be subject to a shorter limitations period than any other claims related to billing under the agreement.</p>

			<p>CLEC Issue Statement: <i>Should there be a time limit on the parties' ability to engage in backbilling?</i></p>	<p>basis. Billing beyond (90) calendar days and up to a limit of six (6) months after the date upon which the bill ordinarily would have been issued may be allowed under the following conditions: (1) charges connected with jointly provided services whereby meet point billing guidelines require either Party to rely on records provided by a third party and such records have not been provided in a timely manner; and (2) charges incorrectly billed due to erroneous information supplied by the non-billing Party.</p>	
96	7-2	1.2.2	<p>(A) <i>What charges, if any, should be imposed for records changes made by the Parties to reflect changes in corporate names or other LEC identifiers such as OCN, CC, CIC and ACNA?</i></p> <p>(B) <i>What intervals should apply to such changes?</i></p> <p>[BellSouth will either concur in CLECs' statement of the issue or provide an alternative statement with its Response]</p>	<p>(A) A Party should be entitled to make one (1) "LEC Change" (<i>i.e.</i>, corporate name change, OCN, CC, CIC, ACNA change) per state in any twelve (12) month period without charge by the other Party for updating its databases, systems and records solely to reflect such change. For any additional LEC Changes, TELRIC compliant rates should be charged.</p> <p>(B) "LEC Changes" should be accomplished in thirty (30) calendar days and should result in no delay or suspension of ordering or provisioning of any element or service provided pursuant to this Agreement, or access to any pre-order, order, provisioning, maintenance or repair interfaces. At the request of a Party, the other Party should establish a new BAN within ten (10) calendar days.</p>	<p>This issue (including all subparts) is not appropriate for arbitration in this proceeding because it involves a request by the CLECs that is not encompassed within BellSouth's obligations pursuant to Section 251 of the Act.</p> <p>(A) BellSouth is permitted to recover its costs and CLEC should be charged a reasonable records change charge. Requests for this type of change should be submitted to the BFR/NBR process.</p> <p>(B) The Interval of any such project would be determined by the BFR/NBR process based upon the complexity of the project.</p>

97	7-3	1.4	<i>When should payment of charges for service be due?</i>	Payment of charges for services rendered should be due thirty (30) calendar days from receipt or website posting of a complete and fully readable bill or within thirty (30) calendar days from receipt or website posting of a corrected or retransmitted bill in those cases where correction or retransmission is necessary for processing.	Payment for services should be due on or before the next bill date (Payment Due Date) in immediately available funds.
98	7-4	1.6	<p><i>(A) What interest rate should apply for late payments?</i></p> <p><i>(B) What fee should be assessed for returned checks?</i></p>	<p>(A) The interest rate that should apply for late payments is a uniform region-wide (1) percent per month.</p> <p>(B) In addition to any applicable late payment charges, a uniform region-wide \$20 fee for all returned checks should apply.</p>	<p>(A) The applicable interest rate approved by each state Commission in BellSouth's tariffs should apply.</p> <p>(B) The Commission approved rate from the GSST should apply or, in the absence of such, the amount permitted by state law.</p>
99	7-5	1.7.1	<i>What recourse should a Party have if it believes the other Party is engaging in prohibited, unlawful or improper use of its facilities or services, abuse of the facilities or noncompliance with the Agreement or applicable tariffs?</i>	Each Party should have the right to suspend access to ordering systems for and to terminate particular services or access to facilities that are being used in an unlawful, improper or abusive manner. However, such remedial action should be limited to the services or facilities in question and such suspension or termination should not be imposed unilaterally by one Party over the other's written objections to or denial of such accusations. In the event of such a dispute, "self help" should not supplant the Dispute Resolution process set forth in the Agreement.	Each Party should have the right to suspend or terminate service in the event it believes the other party is engaging in one of these practices.

100	7-6	1.7.2	<p>BellSouth Issue Statement: <i>To avoid suspension or termination, should CLEC be required to pay additional amounts that become past due after the Notice of Suspension or Termination for Nonpayment is sent?</i></p> <p>CLEC Issue Statement: <i>Should CLEC be required to calculate and pay past due amounts in addition to those specified in BellSouth's notice of suspension or termination for nonpayment in order to avoid suspension or termination?</i></p>	NO. If CLEC receives a notice of suspension or termination from BellSouth with a limited time to pay nondisputed past due amounts, CLEC should, in order to avoid suspension or termination, be required to pay only the amount past due as of the date of the notice and as expressly and plainly indicated on the notice. Otherwise, CLEC will risk suspension or termination due to possible calculation and timing errors.	Yes, if CLEC receives a notice of suspension or termination from BellSouth as a result of CLEC's failure to pay timely, CLEC should be required to pay all amounts that are past due as of the date of the pending suspension or termination action.
101	7-7	1.8.3	<p><i>How many months of billing should be used to determine the maximum amount of the deposit?</i></p>	The amount of a deposit should not exceed two month's estimated billing for new CLECs or one and one-half month's actual billing for existing CLECs (based on average monthly billings for the most recent six (6) month period). The one and one-half month's actual billing deposit limit for existing CLECs is reasonable given that balances can be predicted with reasonable accuracy and that significant portions of services are billed in advance.	The average of two (2) months of actual billing for existing customers or estimated billing for new customers, which is consistent with the telecommunications industry's standard and BellSouth's practice with its end users.

102	7-8	1.8.3.1	<i>Should the amount of the deposit BellSouth requires from CLEC be reduced by past due amounts owed by BellSouth to CLEC?</i>	YES, the amount of security due from an existing CLEC should be reduced by amounts due CLEC by BellSouth aged over thirty (30) calendar days. BellSouth may request additional security in an amount equal to such reduction once BellSouth demonstrates a good payment history, as defined in the deposit provisions of Attachment 7. This provision is appropriate given that the Agreement's deposit provisions are not reciprocal and that BellSouth's payment history with CLECs is often poor.	NO, CLEC's remedy for addressing late payment by BellSouth should be suspension/termination of service or application of interest/late payment charges similar to BellSouth's remedy for addressing late payment by CLEC.
103	7-9	1.8.6	<i>Should BellSouth be entitled to terminate service to CLEC pursuant to the process for termination due to non-payment if CLEC refuses to remit any deposit required by BellSouth within 30 calendar days?</i>	NO, BellSouth should have a right to terminate services to CLEC for failure to remit a deposit requested by BellSouth only in cases where (a) CLEC agrees that such a deposit is required by the Agreement, or (b) the Commission has ordered payment of such deposit. A dispute over a requested deposit should be addressed via the Agreement's Dispute Resolution provisions and not through "self-help".	Yes, thirty (30) calendar days is a commercially reasonable time period within which CLEC should have met its fiscal responsibilities.
104	7-10	1.8.7	<i>What recourse should be available to either Party when the Parties are unable to agree on the need for or amount of a reasonable deposit?</i>	If the Parties are unable to agree on the need for or amount of a reasonable deposit, either Party should be able to file a petition for resolution of the dispute and both parties should cooperatively seek expedited resolution of such dispute.	If CLEC does not agree with the amount or need for a deposit requested by BellSouth, CLEC may file a petition with the Commission for resolution of the dispute and BellSouth would cooperatively seek expedited resolution of such dispute. BellSouth shall not terminate service during the pendency of such a proceeding provided that CLEC posts a payment bond for the

					amount of the requested deposit during the pendency of the proceeding.
105	7-11	1.8.9	<i>Under what conditions may BellSouth seek additional security deposit from CLEC?</i>	Subject to a standard of commercial reasonableness and the standards for deposits requirements set forth in Attachment 7, BellSouth may seek an additional deposit if a material change in the circumstances of CLEC so warrants and/or gross monthly billing has increased more than 25% beyond the level most recently used to determine the level of deposit. BellSouth should not be entitled to make such additional requests based solely on increased billing more frequently than once in any six (6) month period.	BellSouth may seek additional security, subject to a standard of commercial reasonableness, if a material change in the circumstances of CLEC so warrants and/or gross monthly billing has increased beyond the level most recently used to determine the level of security deposit.
106	7-12	1.9.1	<p><i>BellSouth Issue Statement:</i> <i>To whom should BellSouth be required to send the 15 day notice of suspension of access to LENS?</i></p> <p><i>CLEC Issue Statement:</i> <i>To whom should BellSouth be required to send notice of suspension for additional applications for service, pending applications for service and access to BellSouth's ordering systems?</i></p>	Notice of suspension for additional applications for service, pending applications for service, and access to BellSouth's ordering systems should be sent pursuant to the requirements of Attachment 7 and also should be sent via certified mail to the individual(s) listed in the Notices provision of the General Terms and Conditions.	The 15-day computer-generated notice stating that BellSouth may suspend access to BellSouth's ordering systems should go to the individual(s) that CLEC has identified as its Billing Contact(s), Notices, not system generated, of security deposits and suspension or termination of services shall be sent via certified mail to the individual(s) listed in the Notices provision of the General Terms and Conditions of the Agreement in addition to the CLEC's designed billing contact.

BFR/NBR (ATTACHMENT 11)					
107	11-1	1.5, 1.8.1, 1.9, 1.10	<p>(A) <i>Should BellSouth be permitted to charge CLEC the full development costs associated with a BFR?</i></p> <p>(B) <i>If so, how should these costs be recovered?</i></p>	<p>(A) NO, charges associated with the development of a BFR should be apportioned among CLECs who may benefit from the UNE(s).</p> <p>(B) To the extent BellSouth can charge CLEC for the development costs associated with a BFR, such costs should be assessed through non-recurring and recurring rates.</p>	<p>(A) YES, BellSouth is entitled to recover its costs in provisioning services to CLEC. Since this is a unique request that CLEC is making, CLEC should bear the full development costs.</p> <p>(B) CLEC should be obligated to pay these costs upon request that BellSouth proceed.</p>

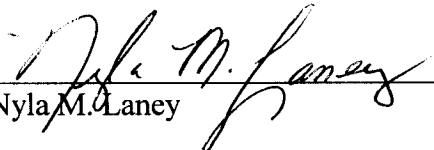
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SCPSC Docket No. 2004-42-C
BellSouth Response
NewSouth, NuVox, KMC and Xspedius Joint Petition
For Arbitration
EXHIBIT B
March 8, 2004

**EXHIBIT B – REDLINED
INTERCONNECTION
AGREEMENT -
PROVIDED ON CD**

John J. Pringle, Jr., Esquire
Ellis Lawhorne & Sims, P.A.
1501 Main Street, 5th Floor
Columbia, South Carolina 29201
(KMC Telecom V, Inc.)
(KMC Telecom III, LLC)
(NuVox Communications, Inc.)
(Xspedius)
(NewSouth Communications, Corp.)
**(Cover Letter, Response, and Exhibit A to Response by
Electronic Mail; Cover Letter and CD-Rom containing
redlined copies of the various interconnection
agreements that comprise Exhibit B to Response by U.S.
Mail)**

John J. Heitmann
Stephanie A. Joyce
Heather T. Hendrickson
Enrico C. Soriano
Kelley Drye & Warren LLP
1200 19th, N.W., Suite 500
Washington, D.C. 20036
**(Cover Letter, Response, and Exhibit A to Response by
Electronic Mail; Cover Letter and CD-Rom containing
redlined copies of the various interconnection
agreements that comprise Exhibit B to Response by U.S.
Mail)**



Nyla M. Laney

PC Docs # 528397